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CURRENT TOPICS

More Crime

THE criminal statistics for England and Wales for 1958 are as puzzling as they are disturbing. There are two outstanding problems facing us. One is the huge number of motoring offences. The other is the alarming increase of crimes committed by youths over seventeen. Fines seem an insufficient deterrent to drivers and it is becoming clear that only disqualification, albeit for short periods, remains to be tried on a large scale for the more serious offences. Magistrates are reluctant to impose it and when they do they seem to think that it should be for a long period, whereas in many cases a month or two would be enough. We are all liable to be selfish, careless or ignorant and sometimes need to be deterred. On the other hand, we wonder whether it is really necessary to prosecute at all for many minor infractions. The problem of the adolescent is less simple. These youths spent their early formative years when the country was at war and painfully recovering from it, when their fathers were in the forces and their mothers in factories. The question is whether it is enough to deplore the teddy-boys without doing something positive to help them. Material poverty is not the only reason for social service. It may be that too many of us are sitting back and letting a small and gallant band of enthusiasts carry too heavy a burden.

Deeds of Covenant

ONE of the last Parliamentary questions to be asked before Parliament rose for the summer recess concerned the action, if any, proposed by the Government on the recommendation of the Royal Commission on Taxation of Profits and Income that a person who makes a covenant in favour of a member of his family and claims tax relief in consequence should be required by statute to produce declarations by himself and the beneficiary as to the absence of any agreement or understanding for the return, direct or indirect, of any part of the benefit. Replying, Mr. J. E. S. SIMON said that as the law stands the existence of conditions or counter-stipulations in regard to payments under any deed of covenant, whether the beneficiary is a member of the covenantor's family or not, prevents the deed from operating as a valid transfer of income for tax purposes. No legislative action was, therefore, necessary. He announced, however, that the Board of Inland Revenue propose to instruct inspectors of taxes to call for declarations bearing on this point in the case of such deeds as part of the evidence required in support of a claim for tax relief, whether or not the covenantor and the beneficiary are related.

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Oaths and Holy Books

SINCE we referred to the plight of the solicitor faced with the difficult task of borrowing a copy of the holy book of the Sikh religion (see "Wanted: One *Guntham*," p. 550, *ante*), prompted by our readers, we have given the whole question further consideration. When we appealed for a copy of the *Guntham*, or *Granth*, we believed, and it is our impression that this belief is widely shared, that if a person belongs to a religion which has a form of oath which cannot be administered in this country because of the absence of the holy book of that religion, that person can neither be sworn nor give evidence under an affirmation: see, e.g., *Law Quarterly Review*, vol. 74, pp. 180 and 481, and the view of Mr. Commissioner WRANGHAM in *R.* v. *Pritam Singh* [1958] 1 W.L.R. 143, which was referred to in a letter on this subject from Mr. R. KENNETH COOKE, O.B.E., which was published at p. 615, *ante*. However, it now seems to us that this is not an accurate statement of the position. Section 5 of the Oaths Act, 1888, provides that "if any person to whom an oath is administered desires to swear with uplifted hand, in the form and manner in which an oath is usually administered in Scotland, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question." In Scotland, the oath is administered by the judge, the witness repeating the words after him, and the judge and witness both stand and hold up the right hand (see Archbold, Criminal Pleading, Evidence and Practice, 34th ed., p. 518). In *Shrinagesh* v. *Kaushal*, which was noted in *The Times*, 3rd October, 1956, the parties, who were Hindus, stated that they believed in one God and, with their consent, HALLETT, J., directed that the oath should be administered in the short Scottish form. Further, in *Rabey* v. *Birch* (1908), 72 J.P. 106, it appears to have been accepted that a doctor, a member of the Church of England, could have taken the oath in the Scottish form because he thought that it was insanitary to kiss the court's copy of the New Testament. It may be said, therefore, that where it is inconvenient or impossible to use the holy book of the religion of the witness, with the consent of the witness the form of oath administered in Scotland may be used.

Affirmations by Sikhs

THE position with regard to Sikhs would seem to be even more surprising, and it must be remembered that any oath is binding which is administered in such form and with such ceremonies as the witness may declare to be binding upon his conscience (see s. 1 of the Oaths Act, 1838, as amended by the Perjury Act, 1911). In view of the findings in *R.* v. *Moore* (1892), 61 L.J.M.C. 80, it has been assumed that Sikhs believe an oath to be binding upon them only if it is sworn on the holy book of their religion. We approached the Priest in Charge of the Sikh Temple in London, KESAR SINGH GYANI, M.A., and he assured us that there is now no foundation for this assumption. The Golden Temple, Amritsar (the headquarters of the Sikh religion), has authorised the use of the affirmation: "I shall speak truth, nothing but the truth and the whole truth," and declared it to be binding without more upon Sikhs throughout the world. The use of a copy of the *Granth* (*Guru Granth Sahib*) is not required. Indeed, in India, every witness, whether he is a Sikh, a Hindu or a Muslim, is required to take the oath in this form. In that country the *Granth* is never taken into the courts and there is no law in India under which the *Granth* can be forced to be permitted in court. If our findings are well founded, it seems to us that the law, perhaps only as it is understood, regarding the taking of an oath or affirmation by non-Christians is in an unsatisfactory state. It is desirable that those charged with the administration of justice should give early attention to this matter.

Land Registry Report, 1958-59

THE CHIEF LAND REGISTRAR has as always a tale of increasing work to tell in his latest annual report. Following the reductions in stamp duty in August, 1958, there was a rise of 27 per cent. in the inflow of work to the registration of title department during the last four months of 1958 compared with the corresponding period in 1957. The report suggests that, as the bulk of the increase emanated from London and Middlesex, the main cause may have been the Rent Act, 1957, and Sir George Curtis surmises that the House Purchase and Housing Act may prove to have a similar or even greater effect. First registrations rose by 40 per cent. above the previous record number in 1957, while dealings showed an increase of 9·6 per cent., also reaching a record level. The time-lag in training new staff engaged to deal with this situation resulted in an increase in the time for completing registrations as compared with 1957: thus, for first registrations in the compulsory areas it rose from 32 working days to 40, and for dealings from 27·3 working days to 37, with somewhat longer periods in the non-compulsory areas. No one can view without misgiving this further deterioration in an already unsatisfactory situation, and further decentralisation to areas where additional staff can more readily be recruited on the lines successfully tried at Tunbridge Wells and Lytham St. Annes (which between them are now disposing of more than half of the work of the registration of title department) seems to us the most promising remedy.

The Truck Acts

AMENDING the Truck Acts will be a task for the new Parliament and the appointment of a committee under the chairmanship of Mr. DAVID KARMEL, Q.C., is the first move. While we admit that we must be careful not to remove valuable legal safeguards, the strength of the trade unions makes it feasible to relax the law in order to allow arrangements to be made to suit the individual needs of employers and employees.

Criminal Law Revision: Indecency with Juveniles

WE welcome the HOME SECRETARY'S statement in a written answer on 30th July that the Government accept the recommendations of the Criminal Law Revision Committee that any person who commits an act of gross indecency with or towards a child under the age of fourteen or who incites a child under that age to such an act with him or another should be guilty of an offence. The Committee's report has not yet been published, but is expected to appear shortly. It embodies the recommendations in a draft Bill, and the Government propose to take an early opportunity to implement them. This is obviously a serious gap in the law and everyone will want to see it remedied with the least possible delay.

IMPRESSIONS OF AMERICAN LAW AND LAWYERS

AMERICAN law and lawyers are of particular interest to us since The Law Society received an invitation from the American Bar Association to attend their conference in Washington in September, 1960. To the majority of practitioners the prospect of a sojourn in the new world must have seemed a pipe dream. Now, despite a certain obstruction from the Inland Revenue, it becomes a possibility.

A pipe dream it certainly appeared to me, until in March, 1958, I decided to apply for a Roosevelt Memorial Travelling Scholarship awarded to business and professional men and women under the age of thirty and resident in Nottinghamshire. The scholarship was endowed by local philanthropists in 1947 in memory of Franklin D. Roosevelt. Great was the surprise of my employers, my friends and myself when the list of successful applicants was published.

During the first two days of my three weeks' stay in New York, I stayed as a guest of Mrs. Eleanor Roosevelt at her country home in Hyde Park, about sixty miles north-west of New York City. These were fascinating days, spent interposing questions on many subjects and listening to the views of one of the world's personalities.

The following weekend I stayed with a lawyer in Fairfield, Connecticut. He was in practice on his own and at the time was delighted with the new décor of his office and waiting-room, which had just been completed. The walls were panelled in light mahogany-faced plywood. With fitted seats and carpet and Mantovani's music in the background, I felt that I had really arrived. However, I never again found a waiting room of such an exotic concept. Indeed, many offices were almost as scruffy as some of their English counterparts.

One evening while in New York, I was privileged to attend an informal dinner party at the New York Yacht Club by the Association in honour of Lord McNair, Sir Harry Hylton-Foster and Sir L. E. Peppiatt, who were attending the American Bar Association Conference in Los Angeles. I met the president of the Association, Mr. Bonsall and several past presidents, together with the English visitors, and the informal speeches afterwards were most stimulating. I would say, though, that from my experience throughout the trip, the standard of after-dinner speaking in the United States is well below that to which we are accustomed.

A District Court trial

It was while in New York that I attended my first trial before a U.S. District Court, which is roughly equivalent to the Queen's Bench Division. The Securities Exchange Corporation, a Federal agency, was bringing proceedings against a "share pusher." I was delighted to hear the staccato "Objection!"—"Overruled" from the attorney and the judge, to see the advocate in cross-examination striding about in front of the Bench gesticulating freely and, unexpectedly, to hear of the inevitable American blonde and of how at a previous hearing she had claimed her rights under the Fifth Amendment. I was honoured to meet the judge and talk with him for some time. I remarked to him on the youth of the Federal attorney in the case, and was told that most advocates begin with the Government agencies and, when they are experienced, move into private practice. I suppose it is better that their experience is gained at the Government's expense! Indeed, I saw few full-time advocates over the age of fifty. On reaching that age the majority of the attorneys seemed anxious to hand over the reins to younger men.

I travelled to Boston by train, passing many delightful yachting resorts crowded with boats of all descriptions. I was most attracted to Boston, perhaps because of its English heritage. I met many charming people there and stayed for several days with a young lawyer and his family. The first time I met him, I felt almost a Yankee myself, for he wore a dark suit, white stiff collar, navy blue club tie and a gold watch chain. This was set off by a pipe and topped by a straw boater! My stay with him was most interesting. I attended several State courts, the State legislature and a number of political meetings. It was election time and I was able to see the voting machines in operation. It should be borne in mind that the electors have from twenty to forty offices for which to choose a candidate, plus a number of propositions for which they are required to register an affirmative or negative vote. Voting machines, in theory, are a considerable simplicity. Unfortunately, in this election—the Primary—the Republican candidate for Governor had died ten days beforehand and all the cards for the machines had been printed. Stickers of the new candidate's name were therefore supplied. Apparently there were five types of voting machines and therefore five different sizes of stickers. Needless to say, these were delivered to the wrong polling booths and most of the machines did not care for this arrangement. The result can be imagined!

Everywhere I went in the States, I met lawyers of one type or another. I visited Chicago, Philadelphia, Denver, Salt Lake City, San Francisco, Los Angeles, Phoenix, Dallas, Memphis and New Orleans, together with a number of other smaller places. I found myself in some unusual situations. I spent four days on a ranch in the Colorado Rockies. Whilst I was there I was taken by a lawyer from the nearest town, twenty miles away, to visit a rancher client—we would have described him as a smallholder—living alone fifteen miles up a dirt road in the most indescribably beautiful setting. We motored along this road, hills covered with golden aspen trees rising above us on either side, their leaves having just been turned by the first frost of Fall. We saw occasional groups of fallow deer scamper away from the car. On arrival we found the client ploughing the side of a hill with one of his two pet tractors. In our best city suiting, we were motioned to climb on to the tractor and drove through a stream and up into the aspen trees where his neighbour had uprooted some of his fencing. Land Registry searches seemed very far away at the time. They also seemed far away in Salt Lake City, where I met one of the State judges, who was a Mormon. I was surprised to find that only half of the Salt Lake City population was Mormon. I also met a justice of the U.S. Circuit Court of Appeals, which is equivalent to our Court of Appeal. There are about ten U.S. Circuits, each covering several States. He was an impressive man and my opinion of him did not alter when I found that I had interrupted his listening to the fourth round of the world baseball series. Everything stops for the world series.

Legal systems compared

The two chief differences I noticed between the legal systems were, firstly, that in the U.S.A. an unsuccessful plaintiff or defendant does not have to pay his opponent's attorney's

costs, only court fees. This is general practice, and so writs, complaints and summonses are issued at the drop of a hat. A plaintiff knows he can damage a defendant even if he loses, because the defendant will have to pay his own attorney's fees. This results in a mass of litigation. Negligence cases in the larger States take three to four years to come to trial. There are four times as many courts and three times as many lawyers per head of the population as in Britain. As the plaintiff's attorney in a negligence case usually takes a retainer on a one-third to one-quarter contingency basis and juries award fantastic damages for personal injuries, these cases usually go to trial!

The second surprising feature is the method of appointing State judges. Federal judges are of a high calibre and are appointed by the President on the advice of the American Bar Association. It is regretted by many lawyers that the same is not true of some State judges. In most States they are appointed by the Governor, in others they are elected and stand for re-election every five to seven years. They are, therefore, put in the invidious position of canvassing for votes and of belonging to one of the two principal political parties. Some lawyers of a few years' standing use the Bench as a relatively comfortable sinecure. In some States these methods do not encourage public confidence in the Bench. Many State judges do not wear gowns and some allow smoking in court. Indeed, I attended a murder trial in Denver, Colorado, at which people, including myself, were wandering in and out of the judge's robing room and both doors to the court room were open. I spent some time leaning against the robing room door-post listening to the proceedings. Prior to the trial proper I watched the extraordinary process of qualifying the jury. This may take five to six days. Every juror is questioned by the attorneys for both sides on any preconceived opinions he may have of the guilt of the accused or of the issue in a civil case, or if he knows the accused, prosecuting or defending counsel or even the judge. If the replies are not satisfactory, the attorney can apply for the juror to be discharged. In addition each attorney has fifteen peremptory challenges, i.e., he can discharge the juror without declaring his cause. This system is merely another example of the way in which American law, in all its spheres, leans over backwards to be and appear democratic.

The secretary of the Association of the Bar of the City of New York was most helpful and introduced me to several of the largest firms in New York, each with a staff of over a hundred lawyers. In these firms I found a great deal of mechanisation; large copying and accounting machines. There was a department of clerks who did nothing but check typed work day in and day out. I realised then, and this was confirmed later, that our American counterparts are many times more verbose than ourselves. The libraries in these firms were immense, with full sets of all the State reports, precedent books, several different digests and even a full set of English reports. In one of the large firms, they prepared a case book of all their cases which involved practical legal points for future reference. Several of the senior partners in these firms are, or have been, household words throughout the world. I was entertained at several luncheon clubs in the Wall Street area—twenty storeys up and beautifully appointed, with wonderful views of the Hudson River—a visit to these clubs would be a revelation to the managers of many similar institutions in England.

I am afraid I regarded some of the styles of documentation and draftsmanship with some amusement. In Los Angeles, after a visit to the new police department, perhaps the most efficient in the world, I was introduced to one of the State Circuit Court judges. We chatted a while and he showed me some of the California law reports. As I was looking through this recent paper-backed edition, my eyes fell upon an unusual case name: *The People* v. *One* 1956 *Chevrolet Four Door Sedan*. I looked again, but there it was. I discovered that the car had been stolen and used for transportation of narcotics. As such it was forfeit to the State and this was a claim as to the ownership of the car brought by a finance company and heard on appeal.

American hospitality

Everywhere I visited I received the utmost help and hospitality from the local Bar associations. In each large city there was a State and a City Bar association which varied enormously in size. The State Bar association tended to deal more with admissions and disciplinary work, whereas the City Bar was a more domestic organisation. Some States had an integrated Bar, insisting that every lawyer had to be a member before being able to practise in the State courts. Most associations had a permanent secretary. I was amazed to find that the Chicago Bar Association has 110 permanent employees, but as there are 11,000 attorneys in the city alone, this is perhaps understandable. This Association has over seventy committees and runs four dining-rooms six days of the week. Chicago is also the home of the American Bar Association, which is housed in a new million-dollar building opposite the university. Here I was treated with the utmost hospitality and regaled with fascinating "behind the scenes" stories of the recent visit to England. No solicitor need be worried about the welcome he will receive in Washington, for I met over thirty attorneys who had been our guests in 1957 and they were all lavish in their praise of our organisation and hospitality.

In Los Angeles I lunched with three attorneys from one of the leading downtown firms. In 1952 they were retained at mid-day on a Saturday to carry out the Nixon Fund inquiry and make a full report by the following Monday. I was interested to learn that the accountants who assisted them in the inquiry were none other than the branch office of a leading firm of London chartered accountants. When they have to, American lawyers can move fast, but generally, with the volume of litigation, legal matters become even more protracted than here.

In Dallas, Texas, I spent some time with a young lawyer who was specialising in atomic energy law. He alone was representing twelve States in this field. In the U.S.A. particularly, there is great scope in this field, for as yet there are no Federal statutes to regulate the use of radio-active material and, therefore, each State is entitled to promulgate its own legislation. Dallas is the great oil centre and there are several law firms working solely for one oil magnate and his diverse interests.

While I travelled around the U.S.A. it was continually brought home that the U.S.A. is made up of (then) forty-nine States. At present there is not even a Federal law relating to negotiable instruments. Each State has different requirements. The result is just a little complex. However, the need for a unified system is realised and a Federal commercial code has been agreed and is at present passing the various State legislatures. Similar legislation in other important fields is contemplated.

Forty-eight States in the union base their laws on the English common law. Many firms have complete sets of

English reports and our decisions are continually cited. Louisiana, however, has its own code based on the Napoleonic Code and so Tulane University has become one of the leading centres in the world for the teaching of civil law. Every year many foreign students and lawyers go to Tulane for courses. The university, however, is obliged to run a dual course so that those students not intending to practice in Louisiana may study common-law principles.

In the U.S.A. the lawyer is everywhere, in politics, in the unions, in corporations and in private practice. I formed the opinion, however, that his lot is little better than his contemporary here. I learned that the average lawyer earns approximately $8,000 to $9,000 per annum, which, when scaled down by the cost of living there, compares reasonably with incomes over here. Life in the east and in California is fairly hectic, but the tempo is much slower than that experienced in business life. In all, except for the climate, there is little to cause a sudden emigration of lawyers from our homeland.

R. M. H.

CHANGES IN THE LICENSING LAW

RUMOURS of some drastic impending changes in the licensing law, involving such fundamental and hitherto untouchable matters as the permitted hours, have been current for some time among those who claim to know what the Government proposes to do next. In the meantime the Finance Act, 1959, has already made some substantial changes, which largely escaped public attention, although they were the topic of lively comment in the trade. The purpose of this article is to consider them.

Monopoly value provisions abolished

First and foremost was the abolition of the provisions as to monopoly value. Monopoly value was the creature of the Licensing Act, 1904, and it came into being at the instance of those who believed that it was wrong that the owner of premises for which a licence was obtained should be able to pocket the increase in value which the premises thus enjoyed. It was enacted that this increase should be taken from the owner and "secured to the public." Licensing justices were required by s. 6 (1) of the Licensing Act, 1953 (reproducing requirements contained in the 1904 Act and the Consolidation Act, 1910, successively), to attach to the grant of a new licence a condition for securing to the public this "monopoly value." They were, however, in estimating the value of hotels as licensed premises, to disregard the increased value arising from profits not derived from the sale of intoxicating liquor. In the early days there were considerable differences of opinion as to how the true monopoly value was intended to be arrived at. A leading early authority on the subject was the celebrated *Eagle* case—*Inland Revenue Commissioners* v. *Truman, Hanbury, Buxton & Co.* [1913] A.C. 650. This was in fact a case of "annual licence value" and not "monopoly value," but it has long been quoted on both points. The case was authority for the proposition that the "increased value" did not refer to all profits from non-intoxicants but only to the increase in such profits attributable to the licence, a point which Lord Shaw of Dunfermline neatly underlined by a homely illustration drawn from the sale of soda-water. The interest of the *Eagle* case, however, and of others that followed it, is now historical only as regards fixing the monopoly value, for by s. 5 of the Finance Act conditions for the securing of such value to the public are no longer to be attached, and any conditions in force for that purpose are to be deemed to have ceased to have effect on 8th April this year.

Excise licence duties reduced

Next, the amount of duty payable on the grant of an excise licence has been drastically altered by the Finance Act and the duty has now taken on the nature of, to use the Chancellor's words, a mere "registration fee." The duty on a dealer's licence for wholesale dealing under s. 146 of the Customs and Excise Act, 1952, is now £5. As to the duty on retailers' licences, this is to be ascertained in accordance with the following table :—

Type of liquor	*On-licence*	*Off-licence*
	£ s.	£ s.
Spirits	5 0	2 0
Beer	1 10	1 10
Wine	1 10	1 10
Sweets	1 0	1 0
Cider	1 0	1 0

It will be recalled that a spirits on-licence—commonly known as the "publican's" licence—authorises the sale by retail of beer, cider, wine and sweets (i.e., fermented liquor made from fruit and sugar) as well as spirits (Customs and Excise Act, 1952, s. 149). This simplification of the licence duty position involves the repeal of the whole of Sched. IV to the Customs and Excise Act, 1952, in which were contained complicated provisions for ascertaining the duty payable on various types of licence. The duty was formerly based on the annual value of the premises—and their annual value was, in the words of the schedule, "the income tax value, if there is such a value applicable, and if there is no income tax value applicable such amount as . . . represents the annual value which a free tenant might reasonably be expected to pay for the premises . . ." There were elaborate provisions as to minimum duty and special rules for such categories as "seasonal hotels," "premises of high annual value" and "refreshment rooms and places of entertainment." All this tangled undergrowth of legislation has now been swept away, to be mourned, perhaps, by the expert who had painfully learned his way about it, but probably not by anyone else.

Reliefs

Some complications remain. The reliefs from licence duty granted by s. 169 of the Customs and Excise Act, 1952, are still obtainable. These reliefs are in respect of the permanent or temporary discontinuance of a business and the prior expiry of a justices' licence. But by s. 2 (4) of the Finance Act these reliefs are only to apply if the licence ceases to be in force or the business is discontinued within nine months of the commencement of the licensing year. The relief is to consist of such proportion of the full annual duty as is specified in the table below "in relation to the month during which the licence ceases to be in force or the trade is discontinued."

Month from the commencement of the licence year	*Proportion of full duty*
First to third	Three-quarters
Fourth to sixth	One-half
Seventh to ninth	One-quarter

Compensation charge

Since Sched. IV to the 1952 Act has been repealed, taking with it the annual value, a change is made necessary in regard to the maximum charge to be levied under s. 18 of the Licensing Act, 1953. This is the charge made in respect of the renewal of old on-licences. An old on-licence is one that was in force on 15th August, 1904, for the sale of intoxicating liquor other than wine alone or spirits alone for consumption on the premises. If these licences are not renewed, the holder is entitled to compensation, unless the refusal is on certain exceptional grounds. The compensation is paid out of the compensation fund, to which all such licence holders in the area have to contribute—the scheme being, as it were, one of mutual insurance. The contribution is known as a "compensation charge," and it used to vary with the annual value of the premises. The procedure was that the compensation authority, unless it certified that it was not necessary to do so, would in each year fix a sum not exceeding £100 as the maximum to be imposed on the renewal of old on-licences in the area. When the licence of any particular premises was renewed there was imposed a percentage of this sum as the compensation levy, the percentage being graduated according to the annual value of the premises. Thus if the annual value of the White Swan was not under £100, but under £200, 20 per cent. of the sum fixed would be charged, while in respect of the Blue Boar, where the annual value was between £600 and £700, 70 per cent. would be charged. This is now changed; and the percentage to be imposed after 1959 is to be equal to the percentage charged in 1958. If no charge was imposed in 1958, because, for instance, the compensation authority certified it to be unnecessary, the percentage "shall be equal to the percentage which would have been appropriate if a charge had been made in 1958." How this somewhat ambiguous provision will work out in practice remains to be seen. In fact the compensation charges, and indeed the whole compensation machinery, are now something of a dead-letter in many areas. Many experienced licensing practitioners nowadays have never had to deal with a compensation point at all.

Club licence

The Finance Act brings in one important change in regard to clubs. Hitherto the law has not known of any such thing as a "club licence," but an excise licence bearing this title has now been introduced. It should be noted, however, that for a members' club where the property is vested in all the members jointly a *justices'* licence is still not required. It is for the sale of liquor that such a licence is needed, and the supply of liquor to a member in a members' club is not in law a sale. The club licence referred to in the Act is thus an *excise* licence, authorising the supply of intoxicating liquor on the premises specified in the licence to members of the club and their guests. The annual duty on such a licence is £5. The secretary of every registered club (every club, that is, which occupies premises habitually used for club purposes where liquor is supplied to members or guests) is required to apply on or before 31st December, 1959, and on or before 1st December in each succeeding year for the grant of a club licence, and if he fails to do so he will be liable to a penalty of £50. After 1st January next year the supply of drinks in the premises of a registered club which has not a club licence in force is to be deemed the sale of intoxicating liquor without an excise licence, and will thus expose the offender to the serious penalties (which involve "detention") contained in the Customs and Excise Act, 1952. Small registered clubs, however, which do not make purchases of intoxicating liquor in excess of £200 a year, will be allowed a refund of half the flat rate excise duty of £5.

The possessor of a club licence will be able in certain circumstances to obtain a repayment or remission of the licence duty. He will have to satisfy the Commissioners of Customs and Excise that within nine months after the commencement of the licence year the club has ceased to exist, or ceased to be required to be registered or has been struck off the register of clubs on the ground of having less than twenty-five members. A club may, of course, cease to be required to be registered if liquor is not supplied to members or their guests or it does not occupy premises habitually used for club purposes. Thus a club, while continuing to exist as an association, might give up its premises or give up the service of alcoholic drinks. Clubs may be struck off the register, under s. 144 of the Licensing Act, 1953, upon no less than eight grounds, of which ceasing to exist or failing to have twenty-five members are the least unmeritorious. If a club is struck off on any of the other grounds (which include frequent drunkenness and use of the premises for unlawful purposes), no repayment or remission of duty will be obtainable.

The licensing practitioner has thus lost an old friend or two as the result of the Finance Act. His sorrow at this will be mingled with pleasure at the thought of some modernity and simplicity being introduced into a field of legislation where these elements have for long been lacking. However, the wholesale clearance operation demanded by so many students of the licensing system still awaits its hour—an hour which may be nearer than many have supposed.

M. U.

THE LAW SOCIETY: INTERMEDIATE EXAMINATION

Of 253 candidates for the Law Portion of The Law Society's Intermediate Examination held on 25th and 26th June, 139 were successful. The following three candidates were placed in the First Class: IAN DUNCAN; WALTER NICHOLAS RADCLIFFE; ROY FRANCIS RUSSELL.

INCOME TAX PENALTIES

In a written Parliamentary answer on 30th July, Mr. J. E. S. Simon announced that following *Commissioners of Inland Revenue* v. *Hinchy* [1959] 3 W.L.R. 66; p. 508, *ante* (although the case is under appeal to the House of Lords), the Chancellor of the Exchequer intended to make a full review of the penalty provisions of the Income Tax Acts. As an interim measure, the Inland Revenue practice would be changed in cases involving incorrect income tax returns. Hitherto it had been the practice to sue for the full penalty for which, on the official view of the law, s. 25 (3) of the Income Tax Act, 1952, provided, and not for the reduced amount which in appropriate circumstances the Inland Revenue were prepared to accept in exercise of their statutory power to mitigate penalties. It was now proposed to sue in such cases for the actual sum which the Inland Revenue wished to recover by way of penalty, unless special circumstances rendered that course impracticable.

Common Law Commentary

DEDUCTION FOR DISABLEMENT GRATUITY

A PROBLEM of construction of a section of the Law Reform (Personal Injuries) Act, 1948, has come before four different High Court judges and the interpretations given have shifted first one way and then back again. Stable, J., having given his view in March, 1958, Finnemore, J., adopted an alternative interpretation in January, 1959; the problem again came before Paull, J., in April last, and the learned judge adopted Finnemore, J.'s view; but now Mr. Justice Edmund Davies has had the problem and he has decided that Stable, J.'s interpretation was right.

Not thought of

We can only guess what the draftsman had in mind when he drafted the particular section. Reading the judgments in question one may well feel that Davies, J., is right in thinking that the problem was not in the mind of the draftsman at all: for if it had been one feels that more specific language would have been used.

The section in question is s. 2 (1) of the Act dealing with sums to be deducted from the claim for special damage included in any action for damages for personal injuries brought by a servant against his master. It may be remembered that under the former Workmen's Compensation Acts a workman had the often difficult choice of electing to take damages or to take workmen's compensation, but he could not have both. Now under the Law Reform (Personal Injuries) Act, 1948, he can have both except that he must bring into account, by way of deduction from his claim for special damages, one-half of his National Insurance benefits (where those benefits are industrial injury benefit, industrial disablement benefit or sickness benefit). This one-half is however further reduced by the fact that it is only the benefits "for the five years beginning with the time when the cause of action accrued" that have to be halved and then deducted; and, as stated above, the deduction is only from any claim for special damages, so that if the sum from which the deduction is to be made is the smaller of the two a mere cancellation occurs—the balance is not carried to the claim for general damages.

Five-year value of a lump sum?

The controversy is centred on that part of the section, quoted above, concerning the five-year period, where the benefit received is in the form of a lump sum: that is where disablement is assessed at less than 20 per cent. and is a final assessment.

The view taken by Stable, J., was that the rights which he had to consider were not just rights simply in relation to the five-year period: they were rights in relation to the whole period of possible incapacity. "The fact that rights outside the five-year period were settled, disposed of and discharged by a lump sum payment does not transform that lump sum payment into a right accrued within the five-year period. To take the simplest possible example: if I have got a right accruing ten years hence, and that right is to be discharged by an immediate payment, that does not transform that right into a right accruing at the time the payment was made. The payment is made in relation to a right accruing ten years hence . . ." said Stable, J., in the unreported case.

Finnemore, J., in another unreported case, took the opposite view: he said that, although the sum is described as being for life, it is a sum of money or a right which has accrued to the recipient within the five years and, as he has actually received the money, his lordship thought one ought to regard the whole of it and deduct one-half of the whole, instead of reducing it by relating the five-year period to the recipient's expectation of life and finding the proportion resulting from that ratio.

How it works out

From the workman's point of view the method accepted by Stable, J., is preferable because it results in a smaller deduction; and it compares more favourably with the case where a workman's disability is greater than 20 per cent. so that he receives a weekly payment, because he then only has to deduct the value of the weekly payments for five years next ensuing from the cause of action, although he may for the rest of his life receive similar weekly payments.

The matter came before Paull, J., in *Roberts* v. *Naylor Bros., Ltd.* [1959] 1 W.L.R. 718; p. 491, *ante*, and immediately next to it we have the view of Davies, J., in *Perez* v. *C. A. V., Ltd.* [1959] 1 W.L.R. 724 (p. 492, *ante*). Paull, J., followed Finnemore, J., but Davies, J., has gone back to the views of Stable, J. Which side of the ditch is likely to commend itself in the long run?

A right and its discharge

It is submitted that Stable and Davies, JJ., are right: not merely because that gives what commends itself as fairer, nor even on the ground that the draftsman meant so to provide, but as the true interpretation of the section. Paull, J., was fully conscious that his interpretation might be said to work a hardship and made clear that if he had felt there was any difficulty in interpretation he would prefer the one that did not lead to such hardship. "But feeling as I do that the words of Parliament are plain, I do not think that any question of hardship ought to enter into how I give my judgment. Hardship is for Parliament; it is not for the courts. A judge's duty is to interpret, by ordinary canons of interpretation, the words which Parliament has chosen to use. If that results in hardship it is for Parliament to put the hardship right," said his lordship. As to the draftsman's thoughts, both Finnemore and Davies, JJ., consider that they had not been directed to this point.

The solution is surely that given in the quotation from the judgment of Stable, J., and the flaw in Finnemore, J.'s judgment is his treating "the sum of money or a right" as though "or" were exegetic in operation. The lump sum gratuity is not the right: it is the sum paid in discharge of the right. The right represents the life assessment of his disability and the sum paid in discharge of that right is paid for the period representing the recipient's expectation of life. Hence the "value of any rights . . . for the five years beginning with the time when the cause of action accrued" is only a proportion of the lump sum. With respect, the two judges who require the full one-half deduction have failed to distinguish between the right and its discharge by payment.

This submission receives support particularly from that part of the judgment of Davies, J., on p. 728 where he

criticises the undue concentration on the lump sum by Paull, J., and clearly distinguishes between the sum paid and the rights in respect of which it is paid. A novel view of a quite different kind is put forward by the judge which, one may guess, may well have caused regret to the plaintiff: it is the argument that there is something to be said for the view that the Act has made no provision that is applicable to cases such as the present one, where a disablement gratuity is paid, and that accordingly, no deduction should be made in respect of any part of the gratuity. But as it had not been advanced, its validity did not fall to be considered.

L. W. M.

Practical Conveyancing

EXPEDITING CONTRACT

On Saturday, 1st August, a letter appeared in *The Times* under the heading (which is not an adequate description) of " Options on Houses." The writer, Mr. E. C. Burrell, of New Barnet, complains about the actions of vendors and purchasers of " ordinary private dwelling-houses " who " withdraw from the transaction weeks after the preliminary deposit was paid and just at the moment solicitors have finished ploughing through the draft contract, preliminary inquiries and local searches." He asks whether there should not be an alternative procedure " with a binding contract simple in character for the straightforward case of freehold modern residences sold with vacant possession where planning, bye-law, road making, drainage, road widening, and redevelopment troubles simply cannot arise." Mr. Burrell asks why purchasers should be given what he describes as an option which they can spurn after many weeks and he requires that a new system should be devised which would " limit the time wasters, help a genuine buyer and seller, and cut the costs."

A reply by Mr. Vernon O. D. Cade, of Messrs. Lyon & Cade, of Cambridge, was published in the same columns on 4th August. He points out that a vendor would find difficulty in persuading a potential purchaser to pay for the " option " and suggests that a vendor who wishes to take the risk of delaying a sale could stipulate that a would-be purchaser must pay a stipulated sum for the " option " and be prepared to lose his money if he finds he cannot proceed to the signing of a contract. Mr. Cade emphasises the need for pre-contract inquiries and searches and draws attention to the increased difficulty when the purchaser is relying upon the raising of a loan from a building society who will refuse to lend money if a defect is later found which might have been revealed by early inquiries and searches. Certain points were made regarding costs, but a discussion of them is not relevant to our present examination.

A further letter from Mr. F. J. Bellenger, who has had twenty-five years experience of estate agency, appeared on 7th August. After discussing the questions of costs, Mr. Bellenger expresses the view that the " option " proposal is not feasible. His estimate is that in present legal procedure a vendor can very seldom get a contract in three weeks and four weeks is an average period. Mr. Bellenger states the well known fact that solicitors nowadays insist on searches and preliminary inquiries, but understandably he does not suggest a remedy.

It seems to the present writer that the correspondence has done no more than draw attention to a problem which was widely ventilated some years ago. There does not appear to be, as yet, any suggestion to alleviate what everyone agrees are serious difficulties. The matter is undoubtedly one of some substance, and perhaps it cannot be fully examined in a daily newspaper. We take it up in these columns because there are certain considerations which we think should be in the minds of solicitors in the course of any public discussion, and it may be that a solution, applicable in simple cases at any rate, does exist.

Avoiding preliminary inquiries

Our experience is that the standard conditions designed to avoid preliminary inquiries and searches are rarely used. Consequently, it is not surprising that they are apparently unknown to the writer of the first letter published in *The Times* and have not been referred to subsequently; many solicitors never consider using them. Nevertheless, we are inclined to suggest that in transactions of the type mentioned by Mr. Burrell they provide an acceptable method of avoiding the inconvenience he mentions.

Both The Law Society's Conditions of Sale, 1953, and the current (17th) edition of the National Conditions of Sale contain clauses which can be used at the option of the parties. In substance, their effect is to give the purchaser a right to rescind if it is subsequently found that the property is affected by certain matters, such as land charges and most adverse local land charges which were not disclosed by the vendor. The intention is that the purchaser, relying on this right to rescind, should enter into the contract without the delay which occurs when full inquiries are first made.

Conclusions

We have previously discussed the use of these clauses (97 Sol. J. 395 and 579) and this is not an appropriate time for examining them in detail. Emmet on Title, 14th ed., vol. I, p. 11, contains this statement: " It appears that in normal cases, for instance sales of private houses with vacant possession, solicitors frequently agree the incorporation of [one of these clauses] and there does not seem to be any material danger in so doing. Although it may mean that the contract is not firm it is unlikely that a purchaser will be able to rescind and will wish to do so." Subsequent experience indicates that the word " frequently " was not justified but it is significant that the cases in which use of the clause was recommended are those mentioned by Mr. Burrell in the letter to *The Times* which initiated the correspondence.

We would not on any account agree with him that on such transactions " planning, bye-law, road making, drainage, road widening, and redevelopment troubles cannot arise." Road making questions have to be solved very frequently and drainage and road widening issues are by no means unknown even in connection with modern houses apparently properly planned and erected. On the other hand we believe that there is substance in Mr. Burrell's complaint about the serious consequence of delay. Our conclusion is, therefore, that solicitors should decide on the practice to be adopted according to the nature of the transaction. If there is any

likelihood of complication proper preliminary inquiries and searches should be made. On the other hand in simple cases, such as those envisaged, there is much to be said for adopting one of these optional clauses and so avoiding the delay which must occur when inquiries and searches are made. We are inclined to suggest that the result is substantially that envisaged by Mr. Cade, but without any payment by the purchaser, other than a deposit, and on terms that the purchaser is bound unless he has good ground for refusing to proceed. Probably the main question is whether a vendor's solicitor will advise his client to allow the purchaser the limited right of rescission of the contract. Will it not often be better to take the slight risk involved than to accept the alternative of additional delay before any form of contract is signed ?

We await with interest to see whether there may be further correspondence on the subject in *The Times*. Meanwhile we suggest that solicitors might well think again about adoption of the clauses designed to avoid preliminary inquiries and searches and we would be interested to hear of any problems which have arisen in practice.

J. Gilchrist Smith.

Landlord and Tenant Notebook

HANDEL'S HEARTH

It was soon after reading N.D.B.'s article on " Non-rateable Tanks " in our issue of 12th June last (p. 464, *ante*), discussing the decision, after much conflict of judicial opinion, in *Shell-Mex & B.P., Ltd.* v. *Holyoak* [1959] 1 W.L.R. 188 (H.L.) (p. 154, *ante*), that I visited the Purcell-Handel bicentenary exhibition at the British Museum and was again reminded, this time by one of the exhibits, of the important part played by *Quicquid solo plantatur, solo cedit* in various branches of our law. The case just mentioned interpreted the Plant and Machinery (Valuation for Rating) Order, 1927, the question being whether fuel tanks were, or were in the nature of, buildings or structures. But the enactment clearly reflects the maxim, one which has occasioned so much litigation between landlord and tenant. It was not merely because the exhibit which caught my eye mentioned a hearth and because of the association of the word with fuel that the said exhibit, which was an inventory of the contents of the late Mr. George Frederic Handel's house in Great Brook Street, St. George's, Hanover Square (now 25 Brook Street, W.1), sold by order of the executors to Mr. J. Du Bourk (yield : £48), set me thinking about the law relating to fixtures and wondering whether the purchaser acquired a good title to that hearth.

The inventory began with " In the Garrett " ; later, the first item " In the Dineing-room " was : " An Iron Hearth with Dogs, brass mounted tongs & Shovells," followed by some tables and chairs and sconces and a " Chimney Glass."

Prima facie, a hearth would not be a removable fixture ; and it might even be possible to establish that the dogs and tongs and shovels were constructive freehold. I will deal with the question of their status later, and will now consider the question of the status of the hearth in the light of decisions and *dicta* affecting hearths, grates and chimney-pieces.

It is, of course, well established that the factors to be considered are the object of annexation and the degree of annexation ; and that, in considering both, the effect of severance on the building is of importance.

Hearths

What I believe to be the only case in which hearths had been actually mentioned was available to Handel's executors. In *Poole's Case* (1703), 1 Salk. 368, the plaintiff was the under-tenant of premises on which he carried on the business of a soap-boiler. The sheriff had severed, seized and sold a number of his vats, attached to the building, under a writ of *fi. fa.*, and he sued both sheriff and purchaser. Holt, J., dismissed the action on the ground that the vats were trade fixtures and within the exception allowed to encourage trade and industry, but went on to draw a distinction between " what a soap-boiler did to carry on his trade and what he did *to complete the house*, as hearths and chimney-pieces " : these were not removable. This authority might well have made the executors hesitate before selling that hearth. True, a note was added in the sixth edition of Salkeld's reports by the editor, one W. D. Evans, to the effect that there was a tendency to extend the rights of tenants, marble chimneys having been held to be removable fixtures. But this edition appeared in 1795 ; and hearths are normally more closely annexed than chimney-pieces. An eighteenth-century house would hardly have been complete without a hearth.

Grates

It was the nineteenth century which produced quite a number of decisions showing that grates might or might not be removable fixtures. The circumstances varied considerably. In *R.* v. *St. Dunstan in Kent* (*Inhabitants*) (1825), 4 B. & C. 686, the settlement of a pauper depended on whether a stove and gates put in by a tenant were to be taken into consideration when valuing a house : Bayley, J., said that the tenant might have removed them during the term. In *Grymes* v. *Boweren* (1830), 6 Bing. 437, the claim was by a landlord against his ex-tenant for removing a pump installed by the tenant ; Tindal, C.J., after observing that consideration must be given to the circumstances of each case, the nature of the article, and the mode in which it had been fixed, also that the *quicquid plantatur* rule had always been more relaxed in landlord and tenant cases than as between persons standing in other relations, mentioned that it had been held that stoves were removable during the term ; also grates, ornamental chimney-pieces, wainscots fastened with screws, etc. The subject-matter of *Darby* v. *Harris* (1841), 1 Q.B. 895, included a kitchen range, a register stove, a copper and some grates ; but the action was for illegal distress, the landlord having distrained these articles, and it was held that their status did not matter, the fact that they could not be restored in the same condition making them non-distrainable. Then, in *Ex parte Barclay ; Gawan* v. *Barclay* (1855), 5 De G. M. & G. 403, in which the issue was whether certain fixtures passed by an equitable mortgage of a lease, Cranworth, L.C., reviewed the law relating to fixtures at great length, emphasised the importance of no material injury being caused by removal, and illustrated his point by referring to " grates, cupboards

and other like things" as being capable of removal without causing such injury.

It would seem that by that time a grate might be considered *prima facie* removable. Readers familiar with the Ingoldsby Legends may recall that the talented author appears to have held this view; in "The House-Warming," which concerned the taking over of Ely House from the Bishop of Ely by Sir Christopher Hatton, the bishop is made to observe: ". . . There can be, my good lord, in opinion, no difference betwixt yours And mine as to fixtures And tables and chairs —We need no survey'rs—Take them just as you find them, without reservation, Grates coppers and all, at your own valuation!"

Chimney-pieces

Ornamental and other chimney-pieces were often mentioned during this period. As we have seen, in 1703 Holt, J., did not consider them removable; in 1795, the editor of Salkeld's reports observed that they had in the meantime been held to be removable. In *Buckland* v. *Butterfield* (1820), 2 Brod. & Bing. 54, which was actually a (successful) action for removing a conservatory and pinery, brought against the assignees in bankruptcy of a life-tenant, Dallas, C.J., spoke of the many exceptions grafted upon the rule, instancing "matters of ornament, as ornamental chimney-pieces, pier glasses . . ." Tindal, C.J.'s reference to chimney-pieces in *Grymes* v. *Boweren* has already been mentioned. Then *Gibson* v. *Hammersmith and City Rly. Co.* (1863), 2 Dr. & Sm. 603, a compulsory purchase case, produced a very full review of the law on the subject of trade fixtures by Kindersley, V.C., in the course of which he spoke of "another example quite unconnected with trade, with regard to ornamental fixtures, marble chimney-pieces for example, the grounds for which, perhaps, are not quite so satisfactory. It has frequently been held that, although they are built in to the wall, of that portion of the aperture where the chimney is, still that the tenant may remove them, on the ground that they were put there by the tenant merely for his temporary domestic use while he occupied the premises, and not as a permanent addition to the freehold."

Which makes it seem doubtful whether a hearth would have been held to be a removable fixture in 1759.

The fire irons

Indeed, it might even have occurred to the freeholder to complain of the sale of the dogs, tongs (brass mounted) and shovels on the ground that these harmonised, if they did, with the hearth. It may be that they did not; musicians are not always sensitive in the matter of interior decoration. But if they and the hearth were all of one design, a court would have considered what Fry, J., later called, in *Moody* v. *Steggles* (1879), 12 Ch. D. 261, their metaphysical, as opposed to their physical, connection with the soil. In 1759 the principle had not yet been applied to ornamental additions: the classical example was that of a millstone, held to be freehold, in *Wystow's* case (1523), Y.B. 14 Hen. 8, fo. 25, pl. 6, and then there were the keys as well as a millstone in *Liford's* case (1614), 11 Co. Rep. 46*b*, and the barn (resting on blocks and pattens) in *Culling* v. *Tufnal* (1694), Bull N.P. 34. But if an eighteenth-century court had accepted the same reasoning as that applied by Lord Romilly, M.R., in *D'Eyncourt* v. *Gregory* (1866), L.R. 3 Eq. 382, Handel's executors and the purchaser of the dogs and tongs and shovels might have been in a difficulty. For in that case a number of articles including tapestry and pictures (in panels), statues and figures, and vases and stone garden seats, were found to be essentially part of the house or of the architectural design of building and grounds, and irremovable: "I think it does not depend on whether any cement is used in fixing these articles, or whether they rest by their own weight, but upon this, whether they are strictly and properly part of the architectural design of the hall and staircase itself, and put in there as such . . ."

R. B.

HERE AND THERE

HORRID EXPERIENCE

THE assumption of the absolute adequacy of speech (the squeaks and grunts and hissings which compose our vocabulary) to express every experience and sensation and subtle perception known to the body and mind and soul of man, lies at the root of many fallacies. So when the witness in a court of law swears that he will tell the truth, the whole truth and nothing but the truth about the matter in hand he is almost certainly promising a good deal more than he can perform, and it would be less than just to hold him to it. Yet sometimes a witness makes a brave attempt to transcend the inadequacies of mere language, an effort all the more meritorious in the case of the normally somewhat inarticulate English. Thus when a lady in the witness box declares, as one did recently, that she had a sensation of falling into an abyss and going up into a cloud, adding, "it was a horrid feeling," one rejoices to hear the true spirit of evidence so heartily observed. The comment which follows the description brings forceful verisimilitude to a narrative in itself neither bald nor unconvincing, since to the average middle-class housewife in her forties the experiences usually reserved for mystics and poets, for St. John, St. Teresa or Francis Thompson, would undoubtedly seem "horrid." "To be imprisoned in the viewless winds and blown with restless violence round about the pendent world," is not a sensation normally sought or enjoyed by ladies living on the South Coast, however sincerely they may praise the invigorating quality of the sea breezes or the airs of the Downs.

POLITICAL AWARENESS

AND where did this apocalyptic experience overtake the lady? You would never guess, for the scene of which it was the culmination scarcely seems to belong to this land or century. It was the Dome at Brighton on the occasion of the announcement of local election results. One had no idea that anything so nearly approaching the electoral scenes from the "Pickwick Papers" could have taken place in the decorous atmosphere engendered by the Local Government Acts, but this was the sequence of the events unrolled in the evidence. The election results had been announced and a member of the defeated party was making a speech. Members of the successful party were sounding klaxons and rattles and the son of a councillor ("a charming boy") was blowing a hunting horn. The lady, the wife of an unsuccessful candidate, told him to stop. His father, wearing "a Cup-Tie size rosette" in his lapel, told him to continue. There followed a *mêlée*

in which the lady made to snatch the rosette in order to stuff it into the horn and the father, according to the lady's evidence, grabbed her skirt and nipped her thighs. Thinking, as she said, " two can play at that game," she nipped him back. The encounter ended with blood streaming down the councillor's face and the lady somehow propelled into the lap of an onlooker. It was at that point that she experienced the sensation of clouds and the abyss and, of course, the anti-climax of finding herself, after that soaring and falling, in the lap of a strange gentleman. For the shock and the indignity she was awarded twenty guineas damages at Brighton County Court. Politically minded persons often complain of " apathy " in local elections. They must be immensely reassured by such an episode as this; they must find it (to borrow, with some disgust, an expression of the more illiterate journalese very popular at the moment) " heart warming." The only sad thing is that the lady, even with her twenty guineas safe in her bag, has categorically declared " I will never attend another election night results meeting again." But even if she does not, others may be drawn into politics by the episode, modern composers working on a symphony for klaxon, rattle and hunting-horn; trainees for space travel anxious to experience at first-hand that gravitationless sensation of clouds and abysses; modern playwrights seeking background matter for scenes as symbolically confused as " Ulysses in Night Town." Very soon, if local government elections could keep it up, they would find themselves being reviewed in the intellectual weeklies for their brilliant productions and intelligent audiences.

RICHARD ROE.

Country Practice

BACK FROM NATURE

A VISIT to London is a rare event; and even in a heat wave it can be stimulating. London is a great city, though not, to my mind, one to be found dead in. Hence the anxiety on the part of a country dweller to get to Paddington, Euston or King's Cross as soon as humanly possible after one's last appointment. Only in the train—and perhaps for days afterwards—does the lasting effect of London's impact make itself felt. That, at least, was my impression as I took the weight off my feet and let thoughts of London filter through my tired brain.

The main reason for my visit was the Patent. This involved two business meetings (one at a West End solicitor's office), a visit to the Patent Office, and some contact with the world of advertising. The Patent is a subject which is boring to Highfield's family, and there is no reason to suppose that Highfield's readers would find it any less boring. It is a gadget cooked up by three of us, an engineer, a printer and myself; of universal appeal, coming in two sizes, fully guaranteed . . . More about advertising later on.

My impression of London solicitors is that they are extremely efficient. In London, I feel sure, you only need to become more and more efficient, and you will acquire more and more clients and pay more and more surtax. This is just as true in country districts; the efficient solicitor—the *really* efficient solicitor, I mean—progresses so well that in a very short time he can commence practising in London. Or Manchester. Whichever he chooses, there is no limit to what he might, with just a little more efficiency, achieve.

Personally, I don't mind being inefficient—it leaves me more time to devote to other ploys. The most efficient solicitor I ever met in the provinces took work home with him every night, and at the week-ends played golf only with potential clientèle. This really suited him very well, and had no deleterious effect on his health. If only he had settled in London, he would have succeeded to such an extent that I would never have met him or admired him. All the same, London solicitors, or some of them, do give the countryman an impression of single-minded devotion to the practice of the law that is a little unnerving. On the contrary, think of the stipendiary magistrate who frequently worked at his tapestry when he could or should have been reading the *Law Quarterly Review*. An admirable man. Could someone please start a needlework class at The Law Society's Hall?

Possibly I have been misled by appearances, and it would delight me to learn that some of our most successful solicitors regularly sew a fine seam, or mend fuses, or play on the piano when nobody else is listening.

After lunch, a visit to the Patent Office was quite rewarding. It has a pleasant, reverent air about it, even though it takes eighteen months or so before even a simple (complete) specification can be properly looked at. The library would be as pleasant a place in which to waste time as the Register of Sasines in Edinburgh, but with no fees to pay.

There were then two hours left before the next train home, and I decided to pop into an advertising agency to see whether the gadget had any publicity value. I popped into a prosperous looking one. Two minutes later I was outside again. I tried this again and again in different advertising offices, but the same thing happened each time. The blondes did it. I am not used to blondes, but each advertising office keeps one behind the reception desk. They are trained to bark at strangers. One, sharper toothed and (if anything) blonder than the others, was chained to the desk with what appeared to be a telephone cord. In advertising circles you must have an appointment; failing an appointment, a card. I had neither. It was only by sheer luck that in a Fleet Street establishment the blonde had been let out for a walk and a motherly soul was left in charge. In no time, by her kind arrangement, I was chatting to quite a human sort of being, who told me that the advertising industry was full of manic depressives. It then appeared that the only goods they liked to deal with in his office were machinery and engineering equipment, and we regretfully parted. Next time, if my colleagues and I can bring out a nuclear-propelled tunnel borer, that is the firm I shall certainly patronise. Meanwhile, I had to catch my train, with several hundred other advertising agencies still unexplored.

One last word of advice to the efficient London solicitor—follow the example of the leading incorporated practitioners in advertising: keep a blonde, and keep her fierce. At the reception desk, naturally.

" HIGHFIELD "

Wills and Bequests

Mr. C. HUGHES, solicitor, of Prestatyn, left £46,998 net.

Mr. R. H. TATTERSALL, solicitor, of Conway, left £82,803 net.

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Aden Colony (Amendment) Order, 1959. (S.I. 1959 No. 1297.) 5d.

Assizes (Western Circuit) (No. 2) Order, 1959. (S.I. 1959 No. 1307.) 5d.

This order provides that the Autumn Assizes for the County of Somerset for the years 1959, 1960 and 1961 are to be held at Taunton, and thereafter at Wells and Taunton alternately, and that the Summer Assizes for the year 1960 are to be held at Taunton.

British Transport Commission (Heacham and Burnham Market) Light Railway Order, 1959. (S.I. 1959 No. 1328.) 6d.

Civil Aviation Act (Application to Crown Aircraft) Order, 1959. (S.I. 1959 No. 1309.) 5d.

Compensation (Occasional Use of Land for Defence Training Purposes) (War Office) Regulations, 1959. (S.I. 1959 No. 1289.) 5d.

Cotton Doubling Reorganisation Scheme (Confirmation) Order, 1959. (S.I. 1959 No. 1324.) 8d.

Cotton Spinning Reorganisation Scheme (Confirmation) Order, 1959. (S.I. 1959 No. 1325.) 8d.

Cotton Weaving Reorganisation Scheme (Confirmation) Order, 1959. (S.I. 1959 No. 1326.) 8d.

County of Inverness (Loch nam Faoileann, Benbecula) Water Order, 1959. (S.I. 1959 No. 1330. (S. 78).) 5d.

Electricity (Staff Compensation) Regulations, 1959. (S.I. 1959 No. 1322.) 10d.

Emergency Powers (Amendment) Order in Council, 1959. (S.I. 1959 No. 1310.) 5d.

Evidence (New Zealand) Order, 1959. (S.I. 1959 No. 1306.) 5d.

This order makes entries contained in specified public registers of New Zealand admissible in evidence in the United Kingdom and provides for their proof by official certificate.

Foreign Compensation Orders:—

(Bulgaria) (Amendment). (S.I. 1959 No. 1292.) 5d.
(Poland) (Debts) (Amendment). (S.I. 1959 No. 1293.) 5d.
(Poland) (Nationalisation Claims) (Amendment). (S.I. 1959 No. 1294.) 5d.
(Rumania) (Registration) (Amendment). (S.I. 1959 No. 1295.) 5d.

Gambia (Legislative Council—Extension of Duration) Order in Council, 1959. (S.I. 1959 No. 1300.) 5d.

Draft **Grey Seals** Protection (Scotland) (Suspension of Close Season) Order, 1959. 5d.

Kenya (Constitution) (Amendment) Order in Council, 1959. (S.I. 1959 No. 1302.) 5d.

Keeping of Fireworks Order, 1959. (S.I. 1959 No. 1311.) 5d.

Kuria Muria Islands Order in Council, 1959. (S.I. 1959 No. 1299.) 6d.

Metropolitan Magistrates' Courts (Marylebone) Order, 1959. (S.I. 1959 No. 1313.) 5d.

National Health Service (Southern Hospital) Order, 1959. (S.I. 1959 No. 1342.) 5d.

National Insurance (Overlapping Benefits) Amendment Regulations, 1959. (S.I. 1959 No. 1290.) 5d.

National Insurance (Unemployment and Sickness Benefit) Amendment (No. 2) Regulations, 1959. (S.I. 1959 No. 1278.) 5d.

Nigeria (Northern Cameroons Plebiscite) Order in Council, 1959. (S.I. 1959 No. 1304.) 6d.

Nurses (Scotland) Regulations, 1959. (S.I. 1959 No. 1321 (S. 77).) 5d.

Opticians Act, 1958 (Commencement No. 2) Order, 1959. (S.I. 1959 No. 1316 (C. 8).) 5d.

This order appoints 1st September, 1959, for the coming into force of ss. 2, 3 (except subs. (3)), 4 and 7 (2) of the Opticians Act, 1958.

Perim Order in Council, 1959. (S.I. 1959 No. 1298.) 6d.

Probation Officers and Clerks (Superannuation) (Amendment) Regulations, 1959. (S.I. 1959 No. 1288.) 5d.

Sea-Fishing Industry (Fishing Nets) (Variation) Order, 1959. (S.I. 1959 No. 1333.) 5d.

Weights and Measures (Board of Trade Standard 25 Millilitres) Order, 1959. (S.I. 1959 No. 1315.) 5d.

SELECTED APPOINTED DAYS

August

10th Pensions Appeal Tribunals (England and Wales) (Amendment) Rules, 1959. (S.I. 1959 No. 1340 (L. 10).)

16th Street Offences Act, 1959.
Town and Country Planning Act, 1959.
Town and Country Planning General Development Order, 1959. (S.I. 1959 No. 1286.)
Town and Country Planning (Limit of Annual Value) Order, 1959. (S.I. 1959 No. 1318.)
Town and Country Planning (Prescribed Forms of Notices) Regulations, 1959. (S.I. 1959 No. 1287.)

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Solicitor's Right of Audience

Sir,—I read with interest the article on a solicitor's right of audience, in your issue of 31st July.

The "delectable vision" of appearing in public before the House of Lords is not, however, completely unattainable, for, so far as I am aware, a solicitor has a right of audience before the Committee of that august body when it is sitting to hear applications for leave to appeal. Indeed, in 1957, I appeared before three Lords of Appeal to oppose an application by a litigant in person when I was only an articled clerk.

Alas, she was no female Wintle! I have at least appeared, but I, too, still have but the vision of delighting an "admiring audience" there.

GEOFFREY L. WICKS.

Amersham.

Bank Holidays

Sir,—Rather than consider the abolition of Bank Holidays, why not extend them by making one addition to relieve the gap "twixt August and Christmas"?

I suggest that "Armistice Day" should be renamed "Peace Day" and that it should be fixed for the Monday following Remembrance Sunday.

For legal purposes all such holidays should be labelled Statutory or State Holidays, as they are no longer peculiar to banks.

CHARLES BENNER.

Crawley, Sussex.

Specimen Epitome

Sir,—With reference to the specimen epitome of title published in your issue of the 17th July last, and the subsequent correspondence in regard thereto, the epitome has been carefully considered, and after much thought and deliberation by the principals and staff of this firm, we can only conclude that the whole thing is very "fishy."

FINCH, TURNER & TAYLER.

Northwood,
Middlesex.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

CEYLON: BREACH OF PROMISE: EXPRESS WRITTEN PROMISE ESSENTIAL

Udalagama *v.* Boange

Lord Reid, Lord Tucker, Lord Somervell of Harrow, Lord Denning, The Rt. Hon. L. M. D. de Silva. 29th July, 1959

Appeal from the Supreme Court of Ceylon.

In the action out of which this appeal arose the present respondent, Iranganie Boange, sued the appellant, Cyril Vernal Udalagama, for Rs.20,000 as damages for breach of promise to marry. The District Court of Kegalle dismissed the action, but an appeal against that decision was allowed by the Supreme Court of Ceylon on 25th November, 1955, and the appellant now appealed from the Supreme Court's judgment. The proviso to s. 19 (3) of the Marriages (General) Ordinance (c. 95 of the Legislative Enactments of Ceylon, 1938), enacts that " no action shall lie for the recovery of damages for breach of promise of marriage, unless such promise of marriage shall have been made in writing." Three letters were relied on by the respondent as containing the alleged promise to marry, two from the respondent to the appellant and one from him to her.

LORD TUCKER, giving the judgment, said that the writing required to satisfy the Ordinance must contain an express promise to marry or confirm a previous oral promise to marry, that was, admit the making of the promise and evince continuing willingness to be bound by it. The promise in writing might be contained in one or more documents, but documentary evidence which did not in express or other unequivocal terms contain a promise to marry was insufficient even though it might afford evidence of an oral promise to marry. Extrinsic evidence was only admissible where such evidence was permissible on general grounds, e.g., where the surrounding circumstances might explain some ambiguity or identify some person referred to in the writing. Their lordships were unable to find in the letters in question a promise to marry. On the construction most favourable to the respondent they did no more than assume that a marriage would take place as a result of an oral promise. Whether such promise was conditional or unconditional, and if the former, whether the condition was ever fulfilled, was not stated. Extrinsic evidence being inadmissible to supply the deficiencies in the correspondence the action necessarily failed. Appeal allowed. The respondent must pay the costs of this appeal and of the appeal to the Supreme Court. *Jayesinhe* v. *Perera* (1903), 9 N.L.R. 62, could not be upheld.

APPEARANCES: *Sir Frank Soskice*, Q.C., and *Ralph Millner* (*T. L. Wilson & Co.*). The respondent did not appear and was not represented.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

CRIMINAL LAW: TRIAL WITH ASSESSORS: MISDIRECTION: EFFECT

Bharat *v.* R.

Lord Tucker, Lord Denning, The Rt. Hon. L. M. D. de Silva. 29th July, 1959

Appeal from the Court of Appeal of Fiji.

At the trial of the appellant, Bharat, son of Dorsamy, before Lowe, C.J. of Fiji, and five assessors on a charge of murdering one Chanan Singh on 29th May, 1958, the appellant gave evidence which raised issues of self-defence and provocation. After the judge had summed up to the assessors each of them gave his opinion that the appellant was guilty of murder, and the judge subsequently gave judgment to the same effect. The appellant's appeal to the Court of Appeal of Fiji was dismissed on 16th February, 1959. He had been sentenced to death. He now appealed to the Board.

LORD DENNING, giving their lordships' reasons for having allowed the appeal on 23rd July, said that in his summing-up the judge mentioned the issue whether there was provocation such as to reduce the offence from murder to manslaughter. Unfortunately, the judge directed the assessors wrongly on this point. It was conceded by the Crown that the direction was erroneous in point of law. It wrongly put the burden of proof on the accused, and it gave a wrong description as to what amounted to provocation in law. While at a trial " with the aid of assessors " under s. 246 of the Criminal Procedure Code of Fiji the judge was not bound to conform to their opinions, he must at least take them into account. Properly directed, it was possible that one or more of the assessors might have been of the opinion that the appellant was guilty of manslaughter only, and the fatal flaw in the trial was that the judge by his misdirection disabled the assessors from giving him the aid which they should have given and thus, in turn, disabled himself from taking their opinions into account as he should have done. Their lordships had advised Her Majesty that the appeal should be allowed and the order below set aside and the case remitted to the Court of Appeal in Fiji with a direction that they should quash the conviction for murder and either enter a verdict of manslaughter and pass sentence accordingly or order a new trial, whichever course they considered proper in the interests of justice in the existing circumstances. The Court of Appeal need not for that purpose be constituted by the same judges as it was before.

APPEARANCES: *E. F. N. Gratiaen* and *L. Kadirgamar* (*T. L. Wilson & Co.*); *D. A. Grant* (*Charles Russell & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

House of Lords

TOWN AND COUNTRY PLANNING: DEVELOPMENT: NECESSITY FOR PLANNING PERMISSION: DECLARATION: JURISDICTION: EXCLUSION OF JURISDICTION BY STATUTE: NECESSITY FOR CLEAR EXCLUSION

Pyx Granite Co., Ltd. *v.* Ministry of Housing and Local Government and Others

Viscount Simonds, Lord Goddard, Lord Oaksey, Lord Keith of Avonholm and Lord Jenkins. 6th July, 1959

Appeal from the Court of Appeal ([1958] 2 W.L.R. 371; 102 SOL. J. 175).

A private Act of Parliament, the Malvern Hills Act, 1924, promoted to preserve the amenities of the hills against depredations by quarrying, provided by s. 54 that " for the protection " of the appellant company (which carried on extensive quarrying operations in the area affected by the Act, both on their own freehold and on licensed land): " The following provisions shall, unless otherwise agreed in writing between the company, the Conservators and the Malvern Council, have effect (that is to say): the heads of agreement as set forth in the fourth schedule to this Act are hereby confirmed and made binding " on the parties " and the provisions of this Act shall only apply to and affect the undertaking, property or rights of the company subject to the provisions of the said heads of agreement." The heads of agreement were incorporated, with some variation, in a deed executed in December, 1925, after the passing of the Act. Under the deed the company gave up their rights to quarry many acres of the licensed land in return for a promise by the conservators that the company's rights to quarry on their freehold land and on some 23 acres of licensed land should remain undisturbed. The Town and Country Planning General Development Order, 1950, made under the Town and Country Planning Act, 1947, provides, so far as material (by art. 3 (1) read with Class XII of Sched. I to the Order), that " development authorised by any local or private Act of Parliament " may be undertaken without permission. The company claimed declarations that the development which they proposed to carry out on their freehold and licensed land was " authorised " by the Malvern Hills Act, 1924, and that accordingly two ministerial decisions, in 1949 and 1953, refusing them permission in respect of part of their proposed development and granting permission subject to certain conditions in relation to other parts of their operations were of no effect; and, further, that the conditions imposed by the Minister,

exercising his powers under s. 14 of the Act of 1947, were invalid, as restrictions on the continuance of an existing use which could be imposed only under s. 26 of the Act of 1947 with compensation as provided by s. 27 of the Act. The respondents raised preliminary objections that: (*a*) the court had no jurisdiction to entertain a claim for a declaration, and that the only procedure open to the company was by application under s. 17 of the Act of 1947, which provides that "if any person who proposes to carry out any operations on land . . . wishes to have it determined . . . whether an application for permission in respect thereof is required under this part of this Act having regard to the provisions of the development order, he may . . . apply to the local planning authority to determine the question"; (*b*) that the validity of the conditions imposed by the Minister could only be challenged by certiorari, the time for which was long past, and not by an action for a declaration. Lloyd-Jacob, J., gave judgment for the appellants on all points, and granted the declarations sought. On appeal by the respondents the Court of Appeal by a majority (Lord Denning and Hodson, L.J., Morris, L.J., dissenting) allowed the appeal. The appellants appealed.

VISCOUNT SIMONDS said that he agreed with the dissenting judgment of Morris, L.J., that the proposed development by the appellants fell within Class XII of the development order and that, accordingly, permission was not required. In his (his lordship's) opinion, *R.* v. *Midland Railway Co.* (1887), 19 Q.B.D. 540, on which the respondents relied and on which the majority of the Court of Appeal had based their judgments on this part of the case, was clearly distinguishable. On the question whether the court had jurisdiction to entertain the action, he was of opinion that there was nothing in the Act of 1947 which barred the subject's recourse to the courts; s. 17 merely provided an alternative, not an exclusive remedy. It was a principle not by any means to be whittled down that the subject's recourse to the courts for the determination of his rights was not to be excluded except by clear words. That was, as McNair, J., called it in *Francis* v. *Yiewsley and West Drayton Urban District Council* [1957] 2 Q.B. 136, a "fundamental rule" from which he (his lordship) would not, for his part, sanction any departure. There was, in his opinion, nothing in *Barraclough* v. *Brown* [1897] A.C. 615 (which had been relied upon by the respondents), which denied the appellants that remedy in the present case. In these circumstances it was unnecessary to consider the respondents' other objections, and he would allow the appeal. The other noble and learned lords delivered opinions agreeing that the appeal should be allowed. Appeal allowed.

APPEARANCES: *J. Ramsay Willis*, Q.C., and *William Scrivens* (*Stephenson, Harwood & Tatham*); *G. D. Squibb*, Q.C.; *J. R. Cumming-Bruce* and *Andrew Leggatt* (*Solicitor*, Ministry of Housing and Local Government; *Sharpe, Pritchard & Co.*, for *W. R. Scurfield*, Worcester).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law]

Court of Appeal

ASSESSMENT OF DAMAGES BY A JURY: LIMITED POWER OF APPELLATE COURT TO INTERFERE: JURIES NOT BOUND BY PATTERN OF AWARDS IN COMPARABLE CASES OF JUDGES SITTING ALONE

Scott *v.* Musial

Morris, Ormerod and Willmer, L.JJ.

6th July, 1959

Appeal from Paull, J., and a jury.

A skilled artificer, aged 28 and unmarried, was gravely injured in a road accident. His spine was fractured and he suffered head injuries which led to partial paralysis of his limbs, with a persisting bladder condition necessitating an operation which would embarrass him for the rest of his life. In addition to many other lesser injuries his sexual capacity was impaired. He was in hospital for six months but showed great courage and went back to work as soon as he was discharged. His employers were generous and helpful and took him back at his previous wage—£15 per week—but he was only able to do clerical work. They were prepared to keep him on "for a reasonable time" in the hope that he would get better. He applied for and was granted trial with a jury of his action against the defendant. The jury observed his disabilities while he gave evidence, and returned a verdict against the defendant on liability, awarding the plaintiff £18,000 general damages. The defendant appealed, asking for a new trial or a reduction of damages on the ground (*a*) of misdirection by the judge in suggesting that the plaintiff's present employment was of only limited duration, and (*b*) that the general damages were out of all proportion to the facts of the case.

MORRIS, L.J., said that the function of the Court of Appeal on a complaint as to the assessment of damages by a jury was different from that of a judge sitting alone. The court could not substitute their assessment and their judgment for that of the jury but had to consider only whether or not the figure stated by the jury was out of all proportion to the circumstances of the case. Unless it was, the court must not interfere. The jury did not have to give reasons and it might be impossible to deduce how they had regarded the particular individual features of a claim. In comparable cases decided by different judges, a certain pattern of awards of damages might emerge. But if an award of a jury did not seem to conform to such a pattern, that did not prove that the jury was necessarily wrong. The views of juries might form a valuable corrective to the views of judges. The jury would not necessarily have knowledge of any pattern which judges had thought appropriate, and were not bound by any such pattern. In the present case the jury had been properly directed; the plaintiff's injuries were undoubtedly grave; the figure of the award was certainly high. But on the principles which must guide the court it would not be right to upset the jury's decision. The appeal should be dismissed.

ORMEROD and WILLMER, L.JJ., delivered concurring judgments.

APPEARANCES: *N. J. Skelhorn*, Q.C., and *Victor Watts* (*Harold M. Storer*); *E. Martin Jukes*, Q.C., and *Barry Sheen* (*White & Co.*).

Reported by Miss M. M. HILL, Barrister-at-Law]

LANDLORD AND TENANT: ACT OF 1954: NOTICE OPPOSING NEW LEASE: VALIDITY

Bolton's (House Furnishers), Ltd. *v.* Oppenheim

Hodson and Harman, L.JJ. 20th July, 1959

Appeal from Danckwerts, J. ([1959] 1 W.L.R. 685; 103 SOL. J. 452).

In a notice under s. 25 (1) of the Landlord and Tenant Act, 1954, terminating the tenancy of business premises, the landlord stated: "I would oppose an application to the court under Pt. II of the Act for the grant of a new tenancy on the ground that on the termination of the current tenancy I intend to demolish the premises comprised in the holding and thereafter to carry out substantial work of construction on the holding . . ." The tenants applied to the court by originating summons for an order under Pt. II of the Act for the grant of a new tenancy and at the hearing it was contended as a preliminary point of law that the notice did not comply sufficiently with para. (*f*) of s. 30 (1) of the Act, since it did not state that the landlord could not reasonably do the work without obtaining possession of the holding.

HODSON, L.J., said that the matter came before the court on a *pro forma* summons issued by direction of the judge for consideration of the preliminary question whether the notice was bad. He saw no reason why, if the tenants wished to take a point of that kind, they should not include in the originating summons a prayer for a declaration to that effect. As to the landlord's notice, the concluding words of s. 30 (1) (*f*) need not be set out. The ground of the opposition was set out sufficiently by setting out the intention as required by the statute. It was true that the landlord would not succeed in his opposition unless he qualified under the concluding words, which stated a condition precedent which must be satisfied by him, but the essential requirement, that the tenant must be informed of the intention with sufficient precision, had been complied with. The landlord's statement gave the right information to the tenants for them to deal with the ground stated in opposition to their application and accordingly the appeal would be dismissed.

HARMAN, L.J., delivered a concurring judgment. Appeal dismissed.

APPEARANCES: *R. E. Megarry*, Q.C., *S. N. Bernstein* and *C. B. Priday* (*Harold Benjamin & Collins*); *L. A. Blundell*, Q.C. (*Harris Chetham & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law]

Chancery Division

INSTALLATION OF ELECTRICITY TRANSMISSION LINES: WHETHER CONSENT OF MINISTER INVALIDATED BY VARIATION FROM PLAN ATTACHED TO CONSENT TO ERECTION OF LINES: WHETHER RIGHT TO ERECT STEEL TOWERS INCLUDED IN WAYLEAVE

Central Electricity Generating Board *v.* Jennaway

Lloyd-Jacob, J. 13th July, 1959

Action.

On 30th August, 1957, the Central Electricity Authority applied for the consent of the Minister of Power under s. 10 (*b*) of the Schedule to the Electric Lighting (Clauses) Act, 1899, to the placing of electric lines along a route crossing the defendant's land. On 18th January, 1958, the Minister consented, subject to the condition, *inter alia*, that the line was erected as shown in certain maps and along a route there delineated in a full red line or as near as possible thereto as might be agreed by the owners and occupiers of any land across which it might be placed, providing that it might not deviate laterally more than 200 yards. On 15th January and 21st October, 1957, the authority gave notice to the defendant under s. 22 (1) of the Electricity (Supply) Act, 1919, of intention to place electric lines supported by three steel towers across his land and above ground and asked him to consent thereto. The defendant refused consent and the Central Electricity Generating Board, to which, by s. 25 (5) of the Electricity Act, 1957, the function of the authority had been transferred as from 1st January, 1958, applied to the Minister. On 5th December, 1958, the Minister gave his consent to the placing of electric lines across the defendant's land; the route of the line shown on the plan attached to the notice of intention and that consent differed from that shown on the plan attached to the consent under s. 10 (*b*) of the 1899 Act. The board claimed a declaration that it was entitled to place the lines and towers on the defendant's land in the position shown on the plan attached to the latter consent, and the defendant counter-claimed for a declaration that that consent was void.

Lloyd-Jacob, J., reading his judgment, said that the condition in the consent of January, 1958, given under s. 10 (*b*) of the 1899 Act, related to the fact of erection and did not give to any owner or occupier of land any part in the determination of how near to the full red line the possible location of the line must be brought. As that consent rendered lawful the placing of electric lines above ground across the defendant's land, the fact that the consent under s. 22 of the 1919 Act more particularly specified the position of the proposed line, provided it was within the zone limits, could not be held to make it *ultra vires*. The two necessary consents had therefore been given. The phrase "above ground" in the Electricity Acts was not limited to "on the ground" and the consent was to be treated as the grant of a wayleave to carry the lines over the defendant's land. His lordship rejected the contention that by reason of the definition of "electric line" in s. 32 of the Electric Lighting Act, 1882, those lines must be deemed to include the supporting towers but in the absence of any context which indicated an intended limitation an easement secured otherwise than from a consenting dominant grantor ought not to be rendered ineffective by a denial of ancillary rights. His lordship found no reason for construing the Electricity Acts as depriving a compulsory wayleave secured under s. 22 of any incidental rights which its proper exercise required, and in his judgment the siting and type of the proposed towers were necessary for the authorised transmission line to be carried above ground; an alteration of the system for the section of the line crossing the defendant's land would be unreasonable. As to the defendant's contention that service of notice of intention by the authority was of no avail to the board, his lordship said that by virtue of s. 26 of the Electricity Act, 1957, the board was to be regarded as the substitute party serving the notice and was to be deemed to have served it; accordingly the requirement of s. 22 had been complied with. Judgment for the plaintiff board.

Appearances: *Sir Milner Holland*, Q.C., and *George Hesketh* (*W. Usher*); *John L. Arnold*, Q.C., and *J. P. Harris* (*Kingsford Dorman & Co.*, for *Crane & Walton*, Leicester).

[Reported by Miss J. F. Lamb, Barrister-at-Law]

INCOME TAX: ASSESSMENT: MEDICAL CONSULTANTS HOLDING PART-TIME APPOINTMENTS UNDER NATIONAL HEALTH SERVICE: WHETHER ASSESSABLE UNDER SCHEDULE D OR SCHEDULE E

Mitchell and Edon (H.M. Inspectors of Taxes) *v.* Ross

Upjohn, J. 21st July, 1959

Appeal by way of case stated from the Special Commissioners for Income Tax.

Income tax is chargeable under Sched. D, in s. 122 of the Income Tax Act, 1952, in respect of "the annual profits or gains arising or accruing . . . from any trade, profession, employment or vocation . . ." and under Sched. E, in s. 156, in respect of "every public office or employment of profit" and "any office, employment . . ." The Special Commissioners had decided that the remuneration received by five medical consultants in respect of their part-time appointments under regional hospital boards fell to be assessed under Sched. D as being part of the profits or gains of their profession, and not under Sched. E. Each of the consultants also had private patients. The inspectors of taxes concerned appealed. The first and main appeal was in respect of Dr. Harold Leslie Ross, a consultant radiologist.

Upjohn, J., reading his judgment, said that as was well known, owing to the difference in wording of the relevant rules, outgoings which might be deductible as expenses under Sched. D might not be so deductible under Sched. E. The main question he had to determine was whether the profits or gains from the appointments arose from an "office" or "employment" within Sched. E. The law now was that all offices and employments for profit, whether public or private, fell within Sched. E. A consultant, in carrying out his duties under a part-time appointment with a board, was not merely rendering services as a private, though professionally skilled and qualified person, but he was the instrument of the Minister to carry out the national scheme "to provide for the establishment of a comprehensive health service for England and Wales," in the words of the National Health Service Act, 1946. He was thus carrying out a public function and was properly described as the holder of a public office. So far he, his lordship, agreed with the Special Commissioners, and indeed went further, in holding that the office was public, but they had decided that nevertheless the taxpayers were assessable under Sched. D on the ground that the hospital appointments were a necessary part of their professions. Once the conclusion was reached that a National Health service appointment was the holding and exercise of an office, the expenses attendant thereon must be deducted under the rules applicable to Sched. E and under no other schedule. The fact that the exercise of the office might truly be described as an incident of the profession of, as in the first appeal, a radiologist could not alter the position. The expenses incurred in domiciliary visits and as *locum tenens* must also be deducted under Sched. E.

Appearances: *R. O. Wilberforce*, Q.C., *E. Blanshard Stamp* and *Alan S. Orr* (*Solicitor, Inland Revenue*); *F. Heyworth Talbot*, Q.C., and *J. L. Creese* (*Hempsons*).

[Reported by Miss M. G. Thomas, Barrister-at-Law]

INCOME TAX: "DIVIDEND STRIPPING": IRISH COMPANY ACQUIRING SHARE CAPITAL OF UNITED KINGDOM COMPANY: CLAIM FOR TAX EXEMPTION

Inland Revenue Commissioners *v.* Collco Dealings, Ltd.

Vaisey, J. 24th July, 1959

Appeal by way of case stated from the Special Commissioners for Income Tax.

The Special Commissioners had held that Collco Dealings, Ltd., a company resident in Eire, was exempt from liability to pay United Kingdom income tax on dividends received from English companies; and also that the company was entitled to repayment of £118,362 10s. tax on the dividends in question.

The claim for exemption arose from a device (which was one facet of the operation) known as "dividend stripping." Collco was incorporated in May, 1957. In October of that year Collco acquired from M. Finance, Ltd., a United Kingdom company, the whole of the issued capital of two English companies. In November, 1957, these two companies declared dividends respectively of £174,500 and £104,000 gross which were paid over to Collco after deduction of tax. Collco claimed (and

had been so allowed by the Commissioners) repayment of the tax as persons "entitled under any enactment to an exemption from income tax" within the meaning of s. 4 (2) of the Finance (No. 2) Act, 1955. For the Crown it was said that, although the price paid by Collco to M. Finance, Ltd., was not disclosed, it was thought to approximate to the amount of the dividends declared and so enabled M. Finance, Ltd. to receive through Collco a capital payment broadly equivalent to the dividends and so avoid liability to income tax.

VAISEY, J., said that the question was whether the words in s. 4 (2) of the 1955 Act included and applied to persons resident in Eire, to whom exemption was granted by s. 349 of the Income Tax Act, 1952. Persons entitled to exemption from tax formed a limited and well defined class. His duty was to construe the relevant words of s. 4 (2) as they stood without a gloss put on them for purely extraneous reasons. If s. 4 (2) did any violence or interfered with the arrangements made between this country and Eire the matter could not be cured by an interpretation which seemed to him illicit. If there was anything to put right it must be done either by diplomatic means or by legislation. The plain object of s. 4 (2) was to prevent "dividend stripping" and, if the decision of the commissioners stood, residents in Eire could do what their fellow taxpayers in this country were prohibited from doing. If Parliament had intended to exclude residents in Eire from restrictions imposed by s. 4 (2) nothing would have been easier than to insert words to that effect. The decision of the commissioners was erroneous and should be reversed and the figures readjusted accordingly.

APPEARANCES: *Sir R. Manningham-Buller*, Q.C., A.-G.; *E. Blanshard Stamp* and *Alan S. Orr* (*Solicitor, Inland Revenue*); *John Foster*, Q.C., and *P. Shelbourne* (*R. M. Bull & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law]

Queen's Bench Division

EXTRADITION: EVIDENCE OF DOMINION LAW: EXPERT EVIDENCE

R. *v.* Governor of Brixton Prison; *ex parte* Shuter

Lord Parker, C.J., Slade and Davies, JJ. 7th July, 1959

Application for habeas corpus.

An applicant for a writ of habeas corpus had been committed to prison to await his return to Kenya by a warrant of the chief magistrate, acting under the provisions of Pt. I of the Fugitive Offenders Act, 1881. No expert evidence of the law of Kenya was adduced before the magistrate, who acted, *inter alia*, on an order signed by the senior resident magistrate in Nairobi, which referred to eleven offences alleged to have been committed by the applicant in Kenya, on which the applicant was to be arrested, and set out the maximum penalty for each offence. In respect of nine of the eleven counts the penalty was stated to be imprisonment for a period exceeding twelve months.

LORD PARKER, C.J., said that he doubted whether the order of the resident magistrate was any evidence, within s. 29 of the Act of 1881, of the punishment to which the offender would be liable in Kenya. What was set out there was law and facts. But quite apart from that there was nothing in the order to indicate that the respective periods of imprisonment there referred to were periods of imprisonment with hard labour, or of such a character as to come within the words of s. 9 of the Act. His lordship felt that in these cases there should be a settled practice that in every case an expert in the local law should give evidence, either in the form of a deposition which came over with the warrant or orally before the chief magistrate in this country. So far as the present case was concerned the proper course was to present the matter to the chief magistrate to deal with in accordance with this practice. The applicant could apply for bail, the terms being fixed by the chief magistrate.

SLADE, J., gave a concurring judgment.

DAVIES, J., agreed.

APPEARANCES: *Neil Butter* (*Official Solicitor*); *John Mathew* (*Charles Russell & Co.*); *J. H. Buzzard* (*Director of Public Prosecutions*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law]

LIBEL AND SLANDER: PRIVILEGE: ORDER AND FINDINGS OF DISCIPLINARY COMMITTEE OF THE LAW SOCIETY: WHETHER PUBLICATION PROTECTED BY ABSOLUTE PRIVILEGE

Addis *v.* Crocker and Others

Gorman, J. 13th July, 1959

Preliminary point of law.

A Disciplinary Committee of The Law Society composed of the three defendants heard a complaint against a solicitor alleging professional misconduct and published its Order and Findings. The committee found that the allegations against the solicitor had not been substantiated, but in the Order and Findings there was a reference to the plaintiff (who was not a solicitor) which the plaintiff claimed was a libel upon him. He brought a libel action against the defendants who, in their defence to the action, claimed, *inter alia*, that the Order and Findings had been made by them as members of the committee under ss. 46 to 48 of the Solicitors Act, 1957, and the Solicitors (Disciplinary Proceedings) Rules, 1957, made thereunder, and had occurred in the course of and formed part of proceedings before a statutory tribunal exercising judicial functions and therefore were absolutely privileged. An order was made that those two questions should be disposed of before the trial of the action.

GORMAN, J., said that the Disciplinary Committee was a statutory committee set up under the Solicitors Act, 1957, and it was clear that it had been properly appointed under that Act and the rules made thereunder. He was satisfied that there was no evidence of bad faith at all on behalf of the defendants. The doctrine of absolute privilege as explained in *Munster* v. *Lamb* (1883), 11 Q.B.D. 588, gave absolute immunity from actions of libel and slander in respect of statements made by judge, parties and witnesses in courts of law. In *Royal Aquarium Summer and Winter Garden Society, Ltd.* v. *Parkinson* [1892] 1 Q.B. 431, Lord Esher, M.R., had said that that immunity applied wherever there was an authorised inquiry which, though not before a court of justice, was before a tribunal which had similar attributes. A number of authorities had been cited which concerned other tribunals in which the words of Lord Esher had been applied. The defendants had submitted that on the authorities this committee was an authorised judicial inquiry and that as such it was not merely performing administrative functions and it was right that it should be protected by absolute privilege. The plaintiff had argued that at the highest the committee was an internal and administrative tribunal administering discipline in private within a private profession to members of a profession, with power limited to fining, striking off the roll of solicitors or suspending their certificates and that those were purely domestic matters which were not such as to make the committee into a court approximating to a court of law. Bearing in mind the fact that the onus was on the defendants to establish their claim, his lordship had come to the conclusion that the defendants' submission was right and he was quite clearly of the opinion that the publication of the words complained of was absolutely privileged and was made under the provisions of and in accordance with the authority of the Solicitors Act, 1957, and the Solicitors (Disciplinary Proceedings) Rules, 1957. There would be judgment for the defendants.

APPEARANCES: The plaintiff in person; *T. G. Roche*, Q.C., and *Helenus Milmo* (*Charles Russell & Co.*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law]

SALE OF GOODS: GOODS AT WHARF SOLD FOR RESALE BY BUYER: DELIVERY ORDERS MADE OUT BY SELLERS IN FAVOUR OF BUYER: FRESH DELIVERY ORDER CREATED BY BUYER ON RESALE OF GOODS: WHETHER A TRANSFER OF DOCUMENT OF TITLE

D. F. Mount, Ltd. *v.* Jay & Jay (Provisions) Co., Ltd.

Salmon, J. 17th July, 1959

Interpleader summons.

On 3rd October, 1957, the defendants, owners of a consignment of canned fruit in cartons lying at a wharf, sold a quantity of the cartons to *M* for resale to two of his customers, agreeing that the price should be paid out of the moneys received by *M* from the resales. The defendants made out delivery orders in favour of *M*, addressed them to the wharfingers but sent them

to *M*, who endorsed them "please transfer to our sub-order" and sent them to the wharfingers. On 4th October, *M* sold the goods to the plaintiffs and at the same time agreed to repurchase the goods from them a week later at a higher price. On the same day he made out a fresh delivery order in the same form as those made out by the defendants except that it was signed by him and gave it to the plaintiffs in return for a cheque for £1,019, the price of the goods. A week later, in pursuance of the agreement with *M*, the plaintiffs sent *M* a delivery order in respect of the goods made out in his favour. *M* sent them in return a cheque for £1,045, but the cheque was dishonoured whereupon the plaintiffs cancelled the delivery order in favour of *M*. Meanwhile the defendants, who had received no payment from *M*, cancelled their contract with him and requested the wharfingers to cancel the delivery orders made out in his favour. *M* was subsequently prosecuted to conviction for obtaining money by fraud from the plaintiffs. The goods were sold by consent and the wharfingers issued an interpleader summons to decide whether the plaintiffs or the defendants were entitled to the proceeds.

SALMON, J., said that the true inference from the facts was that the defendants had assented to *M* reselling the goods in the sense that they intended to renounce their rights against the goods and to take the risk of *M's* honesty. He held that the defendants had assented to the sale of the goods by *M* within the meaning of s. 47 of the Sale of Goods Act, 1893. His lordship said that that was sufficient to dispose of the case, but the plaintiffs had argued that even had there been no sufficient assent by the defendants the plaintiffs would have been entitled to succeed under the proviso to s. 47. That provided that "where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods and that person transfers the document to a person who takes the document in good faith and for valuable consideration," if the last-mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage *in transitu* was defeated. The defendants had argued that there had been no transfer by *M* within the meaning of the proviso. It seemed to his lordship that the words of the proviso confined it to cases where a document had been transferred to the buyer and the same document was than transferred by him to the person who took in good faith and for valuable consideration. If *M* had endorsed the delivery orders which he received from the defendants and transferred them to the plaintiffs the proviso would have applied, but he did not do so. He sent them to the wharf and made out a fresh delivery order in favour of the plaintiffs. In those circumstances the proviso did not apply. The plaintiffs had also relied on s. 25 (2), but the language of that subsection did not compel him to hold that it applied only in cases where the buyer transferred the actual document of which he had possession with the consent of the seller. The object of s. 25 (2) was to protect an innocent person in his dealings with a buyer who appeared to have the right to deal with goods or documents of title to goods of which the seller had allowed him to be in possession. In such a case s. 25 (2) provided that any transfer of goods or documents of title by the buyer to a person acting in good faith and without notice of any want of authority on the part of the buyer should be as valid as if expressly authorised by the seller. Here the defendants had sent the documents of title to *M* with the intention that they should enable him to obtain money from his customers. With the help of the documents *M* had obtained a substantial sum of money from the plaintiffs. In his lordship's view the transfer by *M* of the delivery order of 4th October was by virtue of s. 25 (2) as valid as if expressly authorised by the defendants. The plaintiffs were entitled to succeed.

APPEARANCES: *S. C. Silkin* (*Gershon, Young & Co.*); *S. H. Noakes* (*Gouldens*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law]

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: DIVORCE: CUSTODY: RE-MARRIAGE OF PARTIES: APPLICATION FOR CUSTODY IN DIVORCE SUIT AFTER RE-MARRIAGE

Granger *v.* Granger and Clark

Sachs, J. 12th June, 1959

Summons (adjourned into court).

In March, 1958, a husband was granted a decree *nisi* of divorce, made absolute on 26th June, 1958, on the ground of his wife's adultery with the co-respondent. On 25th July, 1958, Davies, J., adjourned an application for custody for a welfare officer's report, and ordered that the wife should have access to the child who was to remain until further order with a third party. On 4th February, 1959, the husband and wife re-married and on 16th February, 1959, Davies, J., made an order for joint custody by consent. By 7th March, 1959, the wife had returned to the co-respondent and cross-applications were made for custody by the husband and wife on summons. The assistance in argument of the Queen's Proctor was invoked.

SACHS, J., said that in his view s. 26 of the Matrimonial Causes Act, 1950, did not confer on the court power to make in the old divorce proceedings fresh orders regulating the day-to-day affairs of the parties and their children when once a re-marriage had taken place between the parties. It was a ground that might perhaps also be properly expressed by stating that where a man and woman were husband and wife the relevant ancillary provisions of the Matrimonial Causes Act, 1950, depended for their application on the existence of a matrimonial cause concerning the marriage that made them husband and wife. But were the construction of the statute incorrect, he (his lordship) was of the opinion that the court should lean heavily towards letting the re-marriage start with the clean slate that propriety demanded, and could thus generally remit husband and wife to such procedure as would normally be applicable to a married couple. In the circumstances of this case he would, had there been jurisdiction in the previous proceedings, have remitted the parties to the normal procedure for a married couple between whom no matrimonial cause was pending. His lordship said that as the order for joint custody made after the re-marriage had been made by consent and without consideration of the question of jurisdiction it might properly be treated as one made *per incuriam*, and it should be recited as being no longer operative; and in view of his finding as to jurisdiction the two summonses should be dismissed. Summonses dismissed.

APPEARANCES: *Starforth Hill* (*Batchelor, Fry, Coulson & Burder*, for *Foster, Wells & Coggins*, Aldershot); *McCreery* and *Miskin* (*Dutton Makin & Co.*, Winchester); *James Comyn* (*The Queen's Proctor*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law]

SHIPPING: COLLISION: DAMAGES FOR DETENTION

Lord Citrine* (Owners) *v. Hebridean Coast* (Owners). The *Hebridean Coast

Lord Merriman, P. 19th June, 1959

Motion in objection to registrar's report.

In 1951, a collision occurred between a collier, owned by the plaintiffs, the Central Electricity Generating Board, and the defendants' vessel, causing damage to the collier. The defendants admitted liability and the plaintiffs' claim was referred to the registrar to assess the loss caused by detention for eleven and a half days quantified by the plaintiffs at £2,032 on the basis of the cost incurred in chartering other vessels to replace the collier. The registrar found that, of the sea-borne coal supplied to the plaintiffs during the year, about 50 per cent. was carried in their own vessels, while the remainder was carried in chartered vessels. During the detention period, none of the plaintiffs' vessels was idle, and the collier would not have been idle if she had not been under repair. The plaintiffs were using a number of chartered vessels at the time, but no specific vessel could be said to have taken the place of the collier during the detention period. The registrar held that in the circumstances, the measure of damages was a reasonable rate of interest on capital, but he awarded a rate on the agreed value of £207,500 which would produce £2,032 claimed by the plaintiffs and amounted to a rate of interest of 30 per cent.

LORD MERRIMAN, P., reading his judgment, said that it was well settled that the fact that a ship was owned by a public authority or was not "profit earning" did not disentitle the owner from claiming damages and that such damages were not merely nominal. If it was necessary to charter alternative tonnage to replace the damaged vessel, the amount chargeable for the period could be recovered. Alternatively, if the owners were able to provide a substitute out of their own resources an amount might be recovered for the notional hire of the substitute as special damage. Failing any other measure, damages might

be computed at a reasonable rate of interest on the value of the vessel, after taking depreciation into account, for the period during which the owner was deprived of her services. His lordship agreed with the finding that the plaintiffs had not shown that they chartered tonnage to replace the collier, but he disagreed with the suggestion that it was likely that they did, and he did not approve of the allowance of the sum of £2,032 by way of interest. The fair inference from the evidence was that such coal as was carried in chartered vessels during the eleven and a half days was carried in this way in the normal course and that there was no necessity to make any special arrangements to replace the damaged collier for that period. Having rightly rejected that head of special damage it was wrong in principle for the registrar to award the identical amount by way of interest on the capital value. The two measures of damage were quite distinct and should not be confused. Admittedly, the question of the rate of interest to be allowed on capital was a matter for discretion, but the rate at which the present award worked out was inordinate. The award would be varied by substituting interest at the rate of 7 per cent. on the depreciated value of £207,500 for eleven and a half days. Appeal allowed.

APPEARANCES: *Waldo Porges*, Q.C., and *R. F. Stone* (*Sinclair, Roche & Temperley*, for *Botterell, Roche & Temperley*, Newcastle); *K. S. Carpmael*, Q.C., and *Peter Bucknill* (*Middleton, Lewis & Co.*, for *Middleton & Co.*, Sunderland).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law]

REVIEW

Bowstead on Agency. Twelfth Edition. By E. J. GRIEW, of Gray's Inn, Barrister-at-Law. pp. 335. 1959. London: Sweet & Maxwell, Ltd. £3 10s. net.

This work first appeared in 1896, but we are glad that the present editor has decided that it should continue to exist in a form which is familiar to so many practitioners. That is not to say that changes of substance have not been made in this edition and that several articles have not been affected by re-writing. Indeed, few pages have undergone no change at all but Mr. Griew has pursued the "end that the book should remain as nearly the same book as possible."

The article on the measure of damages for negligence and other breaches of duty has been deleted because this subject involves no principles peculiar to agency, while the repeal of s. 4 of the Sale of Goods Act, 1893, has led to the deletion of the article on brokers' bought and sold notes. Much of the article on agency of necessity has been rewritten while the important section on the principal's liability in tort has been drastically revised and now takes into account such decisions as *Broom* v. *Morgan* [1953] 1 Q.B. 597 and that of the Privy Council in *United Africa Co., Ltd.* v. *Saka Owoade* [1955] A.C. 130. The passage on estate agents' commission has been redrafted. New introductory notes to some of the chapters have been introduced to serve as elementary guidance on basic terminology or as hints on the scope and proper use of the chapters concerned. Other changes involve the addition, deletion and re-arrangement of illustrations, and references to one hundred cases decided since the appearance of the last edition ensure that this work is up to date.

The decision of the Court of Appeal in *Ryan* v. *Pilkington* [1959] 1 W.L.R. 403; p. 310, *ante*, provides a recent example of the judicial acceptance of a statement of a rule as found in former editions of "Bowstead on Agency" and the very thorough and painstaking revision undertaken and successfully completed by the present editor makes it certain that this work will continue to command the greatest respect. There will be few common-law practitioners who will fail to add this volume to their shelves.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Partnership—TRANSFER OF LEASEHOLD PROPERTY

Q. *A*, *B*, *C* and *D* are doctors practising in partnership. In 1946, *A* and *B*, who were then the only partners, bought from *A's* former partner a leasehold dwelling-house at the price of £2,350, they providing the purchase money equally. The house was assigned to *A* and *B* as joint tenants on trust for sale, the net proceeds of sale to be held in trust for themselves as assets of their partnership and in accordance with their rights therein. *Ad valorem* stamp duty was paid on the assignment which contained a declaration, in the usual form, empowering the partners or the surviving or continuing partner to appoint a new trustee or trustees thereof. No partnership deed was then entered into. In 1949 *C* became a partner and again no partnership deed was executed and there was no further assignment of the property. In 1958 *D* became a partner. A partnership deed (stamped 10s.) was then executed in which it was provided that the house should be sold to the partners at a valuation, the basis of which was laid down, that it had been so valued at £4,600 and that it should forthwith be treated as an asset of and brought into the partnership at that figure, *A* and *B* each to have credited to a loan account in their respective names in the books of the firm the sum of £2,300 and to be entitled to interest thereon before calculating the firm's profits. The partnership deed further provided that until such time as the property should be assigned to all the partners, *A* and *B* declared themselves to be trustees thereof and of the proceeds of sale thereof for the partners according to their respective interests for the time being therein. In point of fact the house was not, until 1958, treated as a partnership asset. *B* lived, and still lives, there and the partnership uses a surgery and consulting room there. The partners now desire to have the house transferred into the names of them all, but no money is to pass between them. Can the transaction be carried out by an appointment of new trustees of the assignment of 1946, or should it be by an assignment to the present partners, which would presumably be on the basis of a sale at the price of £4,600? Which is the proper method, what stamp duty would be payable and what precedents could usefully be referred to? All questions arising under s. 35 of the National Health Service Act, 1946, may be ignored.

A. The interest of each of the four partners, *A*, *B*, *C* and *D*, in the dwelling-house is in the proceeds of sale only, i.e., an equitable interest. This being the case, there is no need for any formal assignment of the beneficial interest from *A* and *B* to *A*, *B*, *C* and *D*. This matter is covered by the partnership deed which sets out the extent of their interests in the dwelling-house as one of the partnership assets. Nor is there any reason why any expense should be incurred in connection with any appointment of new trustees. *A* and *B* already hold on trust for the partnership. There are two of them, and they must act as directed by the partners generally. This being the case, there is nothing to be gained by appointing two more trustees. Such an appointment will, of course, be required if one dies and it is desired to sell the dwelling-house. By leaving matters as they are, no question of any stamp duty will arise.

Right of Way—WHETHER PERSON UNDER LEGAL OBLIGATION TO SHUT GATES DISSECTING HIS RIGHT OF WAY

Q. We have been consulted by *D*, a farmer, about his right of way along drives crossing half a dozen fields of *J*, an adjoining

farmer. The right appears to have been acquired by prescription, but there is no specific reference to it in the deeds. Where the drive crosses the boundary of each field, there is a gate and trouble has arisen over the shutting of the gates. On behalf of *J*, it is alleged that failure to shut the gates amounts to negligence and on behalf of *D*, it is alleged that the obligation to shut these gates is no higher than one of courtesy and as they obstruct his right of way, he is under no obligation to shut any of them. Is the person exercising a legal right of way dissected by gates under a legal obligation to shut the gates? Would it make any difference if the right of way had been given by grant in the usual words, containing no reference to gates?

A. As far as we know this problem has not been considered by the English courts in any reported decision. The Irish courts, however, have held that where a person has a private right of way dissected by gates he is under a duty to close any gates which may have been left unlocked for his convenience (*Geoghegan* v. *Henry* [1922] 2 Ir. R. 1). We feel that the English courts would probably follow the Irish decision. In our opinion it would make no difference if the right was acquired by grant which contained no reference to gates.

Conveyancing—Whether Term "Fence" Includes a Wall

Q. I have been asked to consider the liability to fence in respect of the following clause which appears in a conveyance: "The purchaser shall . . . erect and for ever thereafter maintain along the boundaries of the said land . . . a substantial fence, such fence to be of a type and of materials to be approved in writing by the corporation." The question which I have been asked is whether the corporation can insist on the building of a wall under the terms of this clause, and whether the term "fence" includes a wall.

A. We cannot find any decided case which is of material assistance in answering this question. In *Urban Housing Co.* v. *Oxford Corporation* [1940] Ch. 70, Greene, M.R., at p. 81, expressed a firm view that the phrase "fence or other enclosure" includes a wall, but the word "enclosure" may extend the meaning of the word "fence." The Concise Oxford English Dictionary defines the word "fence" as a "hedge, wall, railing, etc., keeping out intruders." Nevertheless, we are inclined to take the view that under this covenant the corporation cannot insist on a wall. In conveyancing practice it is usual to refer to a wall and a fence as different things, e.g., in a declaration as to party walls and fences. Precedents of covenants are often drafted on the assumption that there is a difference; see, e.g., Prideaux's Precedents, 25th ed., vol. 1, p. 397, and Encyclopædia of Forms, 3rd ed., vol. 15, p. 1097. Consequently we think a court would not uphold the corporation's requirement of a wall if the covenantee offered to erect a satisfactory fence.

Second Marriage Ceremony on Same Day

Q. We are asked to advise a vicar upon the following paragraph which appears in "Suggestions for the guidance of the clergy with reference to the Marriage and Registration Act, etc.," issued by the Registrar-General:—

"If the parties desire that two valid marriage ceremonies be performed on the same day, the necessary preliminaries as regards each ceremony must be complied with as though no other ceremony were about to be performed, i.e., banns must be published or a superintendent registrar's certificate or an ecclesiastical licence obtained in respect of the ceremony to be performed according to the rites of the Church of England or the Church in Wales, and notice must be given to the appropriate superintendent registrar and his certificate or certificate and licence obtained in respect of the other ceremony."

We are unable to find any authority for this and should be glad if we could be referred to one. It seems that if the first marriage ceremony is valid the second cannot be effective. It may, of course, be that the practice is allowed simply because it is not forbidden and that may be why we have not been able to find any reference to the matter in our text-books.

A. As you suggest, it seems that this practice is allowed simply because it is not forbidden. The crime of bigamy is committed by "whosoever, being married, shall marry any *other* person during the life of the former husband or wife" (s. 57 of the Offences Against the Person Act, 1861) and the relationship of husband and wife is not one of the prohibited degrees of relationship specified in s. 1 (1) and Pt. I of the First Schedule to the Marriage Act, 1949. We regret that we, too, have been unable to find any case in which this practice has been approved or any text-book in which reference is made to it.

Divorce—Respondent and Co-Respondent Abroad—Appointment of Special Examiner

Q. We act for the prospective petitioner in a divorce action. The prospective respondent and co-respondent both live in Canada and are prepared to make certain admissions. They are not represented by solicitors in Britain. We assume the best way to obtain the evidence of the prospective witnesses is by an order of the court appointing a Special Examiner in Canada? (i) Should the summons asking for the order be issued as soon as possible after the issuing of the petition or at some later stage? (ii) We assume the examiner must be named in the summons? (iii) Can any Canadian solicitor who consents be appointed to take the depositions of the witnesses? (iv) Can the depositions be given in evidence once the order for the appointment of the examiner has been obtained?

A. (i) The application should be made by summons after issue has been joined (*Shaw* v. *Shaw* (1862), 2 Sw. & Tr. 642) or as soon as the time for appearance has expired (*Fitzgerald* v. *Fitzgerald* (1863), 3 Sw. & Tr. 397). There may also be circumstances in which the summons may be issued before service of the petition (see, e.g., *Vallentine* v. *Vallentine* [1901] P. 283). As to the contents of the affidavit in support, see *Freud* v. *Associated Newspapers* (1957), *The Times*, 16th October. (ii) Yes, but it is advisable to ask that the order be directed to the person named as examiner or his nominee. (iii) We see no reason why any Canadian solicitor who consents should not be appointed. (iv) Yes, but the judge may refuse to admit the evidence if, in the interests of justice, he should think fit to do so (Matrimonial Causes Rules, 1957, r. 25 (5)). In this case the appointment of a Special Examiner is the best course to follow and for your guidance generally we would refer you to the following works: Rayden on Divorce, 7th ed., p. 500 *et seq.*; Latey on Divorce, 14th ed., p. 753 *et seq.*; Phillips' Divorce Practice, 4th ed., p. 173; and Annual Practice, 1959, p. 873 *et seq.*

"THE SOLICITORS' JOURNAL," 13th AUGUST, 1859

On the 13th August, 1859, The Solicitors' Journal commented on certain concessions as to length of articles in the Attorneys and Solicitors Bill: "We heartily agree that a residence for those years at Oxford or Cambridge . . . is more likely to fit any educated gentleman, whether he is intended for the Bar or for the office of a solicitor . . ., to enter his profession with a prospect of success, than any test that could be applied of the amount of information he may have stored in his brain. It is the contact he has with the world, the knowledge he has acquired of men and things, the friendships he has formed and the variety of experiences gone through, which make a graduate of two and twenty twice the man he would otherwise be. We believe that the number of university men in our ranks is rapidly on the increase, and none can be more convinced than ourselves of the value of such training. Were any change proposed which would afford an equal premium to non-graduates, let them be ever so well educated, we should oppose such an evil innovation, but we cannot raise the same objection to the boon now for the first time offered to those who may not have the means required for proceeding to a university but who show their desire for intellectual improvement in the best way open to them. We cannot agree that there is no value to be attached to an examination, though the worth of a degree taken after residence may be much higher, and we are inclined to think that the Bill gauges the difference with very fair accuracy in allotting an exemption of two years to the regular graduates and of one year to those who have, without residence, passed a competent examination . . . We must . . . remain of opinion that articled clerks who have passed such an examination with credit deserve some recognition of their intellectual attainments . . ."

NOTES AND NEWS

Honours and Appointments

The following officers of the Worshipful Company of Solicitors of the City of London have been elected for the coming year: Master, Sir THOMAS LUND; Senior Warden, Mr. A. F. STEELE; Junior Warden, Mr. V. E. A. SMITH.

APPLICATIONS FOR PLANNING PERMISSION

Important changes are made by s. 37 of the Town and Country Planning Act, 1959, and the Town and Country Planning General Development Order, 1959, as regards applications for planning permission, and appeals to the Minister against decisions on such applications, made on or after 16th August, 1959, the date on which the Act and order come into operation.

Section 37 provides that applications for planning permission made on or after 16th August must be accompanied by a certificate in the appropriate form—to show either that the applicant is the owner of the freehold or has a tenancy of all the land concerned, or that he has given to those concerned the requisite notice containing information about the application (either by individual notice or by advertisement in a local newspaper). The applicant must also, whether he has an interest in the land or not, certify that he has notified any agricultural tenant of the land concerned individually. Where a notice has to be published in a newspaper, an application cannot be made until twenty-one days after the publication of the notice. The planning authority are required to take account of representations received within twenty-one days. The forms of certificate and notice have been prescribed by the General Development Order. It is the duty of applicants to give the necessary notices and provide the appropriate certificates in the form prescribed. The Minister of Housing and Local Government has sent to local authorities suggested Notes for Applicants, for the guidance of those people who wish to apply for planning permission; they include copies of the certificates and notices required for applications.

The procedure outlined above in respect of applications will also apply as regards appeals to the Minister, made on or after 16th August, against the decision of a planning authority on an application for planning permission. Appellants will be required to supply fresh certificates to the Minister: the necessary certificates and notices, so far as they relate to appeals to the Minister, together with Notes for Appellants, for the guidance of appellants, will be provided by the Ministry on request.

HOUSE PURCHASE AND HOUSING ACT, 1959

The following building societies have been designated for the purposes of s. 1 of the House Purchase and Housing Act, 1959: Ealing and Acton Building Society, The Essex Equitable Permanent Building Society, Mid-Sussex Permanent Building Society, Mornington Permanent Building Society, People's Building Society, Scarborough Building Society, South London Building Society, Wessex Permanent Building Society. Lists of building societies previously so designated were published at pp. 512, 548, 557 and 586, *ante*.

WEEKLY LAW REPORTS: REFERENCES

The following page numbers can now be given in respect of notes of cases published in these columns on the dates indicated:—

26th June, 1959:—

Armstrong *v.* Sheppard & Short, Ltd.	3 W.L.R. 84.
Hopkins *v.* Rees & Kirby, Ltd.	1 W.L.R. 740.
John Carlbom & Co., Ltd. *v. Zafiro* (Owners); The *Zafiro*	3 W.L.R. 123.

3rd July, 1959:—

Akerhielm *v.* De Mare	3 W.L.R. 108.
Pilkington's Will Trusts, *In re*; Pilkington *v.* Pilkington	3 W.L.R. 116.
R. *v.* Barnsley Licensing JJ.; *ex parte* Barnsley and District Licensed Victuallers' Association	3 W.L.R. 96.
Thatcher *v.* Thatcher and Gill (Wheeler intervening)	1 W.L.R. 730.

PRACTICE DIRECTION

As from the 1st October, 1959, the list of applications to be dealt with by the Queen's Bench Judge in Chambers will, except in vacations, be published in the Daily Cause List as well as in the Chamber List.

Applications in the ordinary Lists on Tuesdays and Fridays will still be issued returnable at 10.30 a.m. (if attended by Counsel) and 12 noon (Non-Counsel), but, depending on the number of applications to be dealt with, the List may be divided into two parts, one to be heard at 10.30 a.m. and the other not before 2 o'clock. For this purpose it will be necessary to have an estimate of the duration of the hearing of each application and, on the issue of the Notice of Appeal or Summons (other than a Summons for Bail), a copy will be required to be filed endorsed with such estimate. Any alteration in the estimated time or any settlement should be notified to the Chief Clerk, Summons and Order Department, not later than 12 noon on the day preceding the hearing.

Applications estimated to last more than forty-five minutes should, by consent of the parties, be taken out of the ordinary list for a special appointment on Wednesdays or Thursdays.

PARKER OF WADDINGTON, C.J.

31*st July*, 1959.

CASES REPORTED IN VOL. 103

3rd July to 14th August, 1959

For cases reported up to and including 26th June, see Interim Index

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